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**SUBSTITUTE SENATE BILL 5419**

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**State of Washington**

**59th Legislature**

**2005 Regular Session**

**By** Senate Committee on Water, Energy & Environment (originally sponsored by Senators Fraser, Rasmussen, Regala, Pridemore, Rockefeller and Kline)

READ FIRST TIME 02/24/05.

1 AN ACT Relating to water permit processing; and amending RCW  
2 90.03.290, 90.03.270, and 90.03.280.

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

4 **Sec. 1.** RCW 90.03.290 and 2001 c 239 s 1 are each amended to read  
5 as follows:

6 (1) When ~~((an))~~ a completed application complying with the  
7 provisions of this chapter and with the rules of the department has  
8 been filed, the ~~((same))~~ application shall be placed on record with the  
9 department, and it shall be ~~((its))~~ the department's duty to  
10 ~~((investigate the application, and))~~ determine what water, if any, is  
11 available for appropriation, and find and determine to what beneficial  
12 use or uses it can be applied. The department shall investigate the  
13 application. The applicant shall provide a completed application form.  
14 In addition to providing the information requested on the form,  
15 however, the applicant shall also provide such information as may be  
16 required for the department's investigation, determinations, and  
17 findings regarding the application and may provide additional  
18 information. The information provided by the applicant must satisfy  
19 the protocols, that is, study plans and criteria, established by the

1 department for obtaining and providing the information. If an  
2 applicant provides the information and the protocols set by the  
3 department for obtaining and providing it have been satisfied, the  
4 department shall review the information and may take actions to verify  
5 that the information is accurate.

6 (2) With regard to an application:

7 (a) If it is proposed to appropriate water for irrigation purposes,  
8 the department shall investigate, determine, and find what lands are  
9 capable of irrigation by means of water found available for  
10 appropriation((-));

11 (b) If it is proposed to appropriate water for the purpose of power  
12 development, the department shall investigate, determine and find  
13 whether the proposed development is likely to prove detrimental to the  
14 public interest, having in mind the highest feasible use of the waters  
15 belonging to the public.

16 ~~((+2))~~ (3)(a) If the application does not contain, and the  
17 applicant does not promptly furnish sufficient information on which to  
18 base such findings, the department may issue a preliminary permit, for  
19 a period of not to exceed three years, requiring the applicant to make  
20 such surveys, investigations, studies, and progress reports, as in the  
21 opinion of the department may be necessary. If the applicant fails to  
22 comply with the conditions of the preliminary permit, it and the  
23 application or applications on which it is based shall be automatically  
24 canceled and the applicant so notified. If the holder of a preliminary  
25 permit shall, before its expiration, file with the department a  
26 verified report of expenditures made and work done under the  
27 preliminary permit, which, in the opinion of the department,  
28 establishes the good faith, intent, and ability of the applicant to  
29 carry on the proposed development, the preliminary permit may, with the  
30 approval of the governor, be extended, but not to exceed a maximum  
31 period of five years from the date of the issuance of the preliminary  
32 permit.

33 (b) For any application for which a preliminary permit was issued  
34 and for which the availability of water was directly affected by a  
35 moratorium on further diversions from the Columbia river during the  
36 years from 1990 to 1998, the preliminary permit is extended through  
37 June 30, 2002. If such an application and preliminary permit were  
38 canceled during the moratorium, the application and preliminary permit

1 shall be reinstated until June 30, 2002, if the application and permit:  
2 (i) Are for providing regional water supplies in more than one urban  
3 growth area designated under chapter 36.70A RCW and in one or more  
4 areas near such urban growth areas, or the application and permit are  
5 modified for providing such supplies, and (ii) provide or are modified  
6 to provide such regional supplies through the use of existing intake or  
7 diversion structures. The authority to modify such a canceled  
8 application and permit to accomplish the objectives of (b)(i) and (ii)  
9 of this subsection is hereby granted.

10 ~~((3))~~ (4) The department shall make and file as part of the  
11 record in the matter, written findings of fact concerning all things  
12 investigated(~~(, and)~~). The department shall make a summary of the  
13 record of examination, and the proposed permit if the department  
14 proposes to issue the permit, available to the public and provide a  
15 period of at least forty-five days for the public to submit comments  
16 thereon. If ~~((it))~~ the department shall find that there is water  
17 available for appropriation for a beneficial use, and the appropriation  
18 thereof as proposed in the application will not impair existing rights  
19 or be detrimental to the public welfare, it shall issue a permit  
20 stating the amount of water to which the applicant shall be entitled  
21 and the beneficial use or uses to which it may be applied: PROVIDED,  
22 That where the water applied for is to be used for irrigation purposes,  
23 it shall become appurtenant only to such land as may be reclaimed  
24 thereby to the full extent of the soil for agricultural purposes. But  
25 where there is no unappropriated water in the proposed source of  
26 supply, or where the proposed use conflicts with existing rights, or  
27 threatens to prove detrimental to the public interest, having due  
28 regard to the highest feasible development of the use of the waters  
29 belonging to the public, it shall be duty of the department to reject  
30 such application and to refuse to issue the permit asked for.

31 ~~((4))~~ (5) If the permit is refused because of conflict with  
32 existing rights and such applicant shall acquire same by purchase or  
33 condemnation under RCW 90.03.040, the department may thereupon grant  
34 such permit. Any application may be approved for a less amount of  
35 water than that applied for, if there exists substantial reason  
36 therefor, and in any event shall not be approved for more water than  
37 can be applied to beneficial use for the purposes named in the  
38 application. In determining whether or not a permit shall issue upon

1 any application, it shall be the duty of the department to investigate  
2 all facts relevant and material to the application. After the  
3 department approves said application in whole or in part and before any  
4 permit shall be issued thereon to the applicant, such applicant shall  
5 pay the fee provided in RCW 90.03.470: PROVIDED FURTHER, That in the  
6 event a permit is issued by the department upon any application, it  
7 shall be its duty to notify the director of fish and wildlife and  
8 interested federally recognized Indian tribes of such issuance.

9 **Sec. 2.** RCW 90.03.270 and 1987 c 109 s 85 are each amended to read  
10 as follows:

11 Upon receipt of ~~((an))~~ a completed water rights application form,  
12 it shall be the duty of the department to ~~((make an endorsement thereon~~  
13 ~~of the))~~ date ~~((of its receipt,))~~ stamp and ~~((to))~~ keep a record of  
14 ~~((same))~~ it. If ~~((upon examination,))~~ an application form is filed  
15 with the department but the information requested on the application  
16 form is ~~((found to be defective, it))~~ not complete or the form is not  
17 accompanied by the proper application fee, the form shall be returned  
18 to the applicant ~~((for correction or completion,))~~ and the date and the  
19 reasons for the return thereof shall be ~~((endorsed thereon and made a~~  
20 ~~record in his office. No application shall lose its priority of filing~~  
21 ~~on account of such defects, provided acceptable maps, drawings and such~~  
22 ~~data as is required by the department shall be filed with the~~  
23 ~~department within such reasonable time as it shall require))~~ noted in  
24 the department's records and in a letter returning the form. The  
25 department may not require an applicant to provide information in  
26 support of an application for a water right permit that is not  
27 necessary for the department's investigations, determinations, or  
28 findings regarding that particular application.

29 **Sec. 3.** RCW 90.03.280 and 1994 c 264 s 83 are each amended to read  
30 as follows:

31 Upon receipt of a ~~((proper))~~ completed application, the department  
32 shall instruct the applicant to publish notice ~~((thereof))~~ in a form  
33 and within a time prescribed by the department in a newspaper of  
34 general circulation published in the county or counties in which the  
35 storage, diversion or withdrawal, and use is to be made, and in such  
36 other newspapers as the department may direct, once a week for two

1 consecutive weeks. The notice shall include information pertinent to  
2 the proposed appropriation, including the location, the source, the  
3 purpose or purposes of use, and the annual or instantaneous quantity  
4 proposed to be diverted or withdrawn. The notice shall state that  
5 persons wishing to protest the proposed appropriation must do so in  
6 writing to the department within thirty days of the last date of  
7 publication of the notice. In order to be considered by the  
8 department, a protest must be received by the department within thirty  
9 days of the last date of publication of the notice. Upon receipt by  
10 the department of an application it shall send notice thereof  
11 containing pertinent information to the director of fish and wildlife.

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