
SENATE BILL 5419

State of Washington 59th Legislature 2005 Regular Session

By Senators Fraser, Rasmussen, Regala, Pridemore, Rockefeller and Kline

Read first time 01/24/2005. Referred to Committee on Water, Energy & Environment.

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

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

1 application. In determining whether or not a permit shall issue upon
2 any application, it shall be the duty of the department to investigate
3 all facts relevant and material to the application. After the
4 department approves said application in whole or in part and before any
5 permit shall be issued thereon to the applicant, such applicant shall
6 pay the fee provided in RCW 90.03.470: PROVIDED FURTHER, That in the
7 event a permit is issued by the department upon any application, it
8 shall be its duty to notify the director of fish and wildlife and
9 affected federally recognized Indian tribes of such issuance.

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

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

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

33 Upon receipt of a ~~((proper))~~ completed application, the department
34 shall instruct the applicant to publish notice ~~((thereof))~~ in a form
35 and within a time prescribed by the department in a newspaper of
36 general circulation published in the county or counties in which the

1 storage, diversion or withdrawal, and use is to be made, and in such
2 other newspapers as the department may direct, once a week for two
3 consecutive weeks. The notice shall include information pertinent to
4 the proposed appropriation, including the location, the source, the
5 purpose or purposes of use, and the quantity proposed to be diverted or
6 withdrawn. The notice shall state that persons wishing to protest the
7 proposed appropriation must do so in writing to the department within
8 thirty days of the last date of publication of the notice. In order to
9 be considered by the department, a protest must be received by the
10 department within thirty days of the last date of publication of the
11 notice. Upon receipt by the department of an application it shall send
12 notice thereof containing pertinent information to the director of fish
13 and wildlife.

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