
SENATE BILL 5549

State of Washington

59th Legislature

2005 Regular Session

By Senators Hargrove and Poulsen

Read first time 01/27/2005. Referred to Committee on Water, Energy & Environment.

1 AN ACT Relating to allocation of conserved water rights; adding new
2 sections to chapter 90.03 RCW; and creating a new section.

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

4 NEW SECTION. **Sec. 1.** The legislature finds that conservation and
5 efficient use of water benefits all water users by providing water to
6 satisfy current and future needs in a cost-effective manner. The
7 legislature further finds that while current water law principles call
8 for efficiently using water to meet beneficial needs, many water right
9 holders will not be inclined to make investments in conservation
10 measures if all of the resulting water savings are returned to public
11 water status for use by others or for other purposes.

12 Therefore it is the intent of this act to strongly promote
13 conservation by providing for a fair allocation of conserved water
14 between the water right holder implementing conservation measures and
15 the public by administering a portion of the conserved water in the
16 trust water program.

17 NEW SECTION. **Sec. 2.** A new section is added to chapter 90.03 RCW
18 to read as follows:

1 As used in sections 2 through 7 of this act:

2 (1) "Conservation" means the reduction of the amount of water
3 diverted or withdrawn to satisfy an existing beneficial use achieved
4 either by improving the technology or method for diverting,
5 withdrawing, transporting, applying, or recovering the water or by
6 implementing other approved conservation measures.

7 (2) "Conserved water" means the amount of water that results from
8 conservation measures, measured as the difference between:

9 (a) The smaller of the amount stated on the water right permit or
10 certificate, or the maximum of water that can be diverted using the
11 existing facilities; and

12 (b) The amount of water needed after implementation of conservation
13 measures to meet the beneficial use under the water right certificate.

14 NEW SECTION. **Sec. 3.** A new section is added to chapter 90.03 RCW
15 to read as follows:

16 (1) Any water right holder may apply to the department for approval
17 of an allocation of conserved water from a conservation measure that
18 the holder intends to implement or that has been implemented within the
19 five years prior to making the application.

20 (2) The application shall include:

21 (a) A description of the proposed measures or implemented measures;

22 (b) A description of the existing diversion facilities and an
23 estimate of the amount of water that can be diverted at the facilities,
24 and for implemented measures, a description of the diversion facilities
25 before the conservation measure was implemented and the amount of water
26 that was diverted at the facilities before the conservation measure was
27 implemented;

28 (c) The amount of water needed or that will be needed to supply
29 existing rights after implementation of the conservation measures;

30 (d) The amount of conserved water expected to be conserved or that
31 has been conserved by implementation of the conservation measures;

32 (e) The proposed allocation and use of the conserved water if
33 different from the allocation specified in section 4 of this act;

34 (f) The intended use of any conserved water allocated to the
35 applicant;

36 (g) The applicant's choice of priority date for the conserved
37 water; and

1 (h) Any other information the department considers necessary to
2 evaluate the effectiveness of the proposal.

3 (3) If a person proposes conservation measures within the
4 boundaries of an irrigation district, the person also must submit
5 evidence that the board of directors of the district approves the
6 conservation application.

7 NEW SECTION. **Sec. 4.** A new section is added to chapter 90.03 RCW
8 to read as follows:

9 (1) Upon receipt of an application for allocation of conserved
10 water:

11 (a) Notice of the application shall be published as provided in RCW
12 90.03.280; and

13 (b) The provisions of RCW 90.14.160 through 90.14.180 do not apply
14 to the conserved water covered by the application.

15 (2) The department shall allocate fifty percent of the conserved
16 water to the applicant and the remaining fifty percent to the state to
17 be managed as a trust water right under chapter 90.42 RCW, except that
18 the allocation shall be adjusted if the criteria of section 7 of this
19 act apply. The department may not allocate conserved water under the
20 provisions of this section if the application is filed more than five
21 years after the conservation measure was implemented.

22 (3) The department shall notify the applicant and any other person
23 requesting notice of the proposed action by the department on the
24 application.

25 (4) After the department completes the allocation of conserved
26 water, the department shall issue a superseding provisional certificate
27 reflecting the change in the original water right. Once the
28 conservation project is completed, separate new certificates shall be
29 issued as follows:

30 (a) A certificate reflecting the change in the original water
31 right;

32 (b) A certificate for the use of conserved water allocated to the
33 applicant that reflects the quantity of the right, and the place and
34 purpose of use of the conserved water; and

35 (c) A certificate reflecting a trust water right held by the state,
36 with a priority date as determined in section 6 of this act.

1 (5) Once approved by the department, a water right to conserved
2 water allocated under this section shall be a water right with all
3 rights and responsibilities as is accorded to any other water right
4 recognized, permitted, or certificated under this chapter or chapter
5 90.44 RCW.

6 NEW SECTION. **Sec. 5.** A new section is added to chapter 90.03 RCW
7 to read as follows:

8 The department shall adopt rules to implement sections 2 through 7
9 of this act.

10 NEW SECTION. **Sec. 6.** A new section is added to chapter 90.03 RCW
11 to read as follows:

12 The priority date of any right to the use of conserved water,
13 including uses under a trust water right, shall be either the same as
14 the priority date of the water right from which the conserved water was
15 allocated or one minute after such priority date, at the election of
16 the applicant for allocation of the conserved water.

17 NEW SECTION. **Sec. 7.** A new section is added to chapter 90.03 RCW
18 to read as follows:

19 The applicant and the department may agree upon an allocation of
20 conserved water that is different from the presumptive allocation under
21 section 4 of this act if the applicant and department determine that
22 another allocation is consistent with the public interest in
23 encouraging water conservation, in ensuring that necessary streamflows
24 are maintained and achieved, and in managing public water resources to
25 meet new water use demands. Where public funds are provided for the
26 conservation measures, the percentage of conserved water allocated to
27 the state as a trust water right shall not be less than the percentage
28 that the public funds bear to the total funds provided to install or
29 implement the conservation measures.

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