
SUBSTITUTE SENATE BILL 6086

State of Washington

59th Legislature

2005 Regular Session

By Senate Committee on Water, Energy & Environment (originally sponsored by Senators Honeyford, Hewitt, Poulsen, Morton, Mulliken and Rasmussen)

READ FIRST TIME 04/06/05.

1 AN ACT Relating to allowing retrofitting of domestic wells to
2 maintain agricultural irrigation purposes during drought; amending RCW
3 43.83B.410; and declaring an emergency.

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

5 **Sec. 1.** RCW 43.83B.410 and 1989 c 171 s 3 are each amended to read
6 as follows:

7 Upon the issuance of an order under RCW 43.83B.405, the department
8 of ecology is empowered to:

9 (1)(a) Authorize emergency withdrawal of public surface and ground
10 waters, including dead storage within reservoirs, on a temporary basis
11 and authorize associated physical works, including authorization for
12 retrofitting of domestic wells to maintain agricultural irrigation
13 purposes, which may be either temporary or permanent. The termination
14 date for the authority to make such an emergency withdrawal may not be
15 later than the termination date of the order issued under RCW
16 43.83B.405 under which the power to authorize the withdrawal is
17 established. The department of ecology may issue such withdrawal
18 authorization when, after investigation and after providing appropriate

1 federal, state, and local governmental bodies an opportunity to
2 comment, the following are found:

3 (i) The waters proposed for withdrawal are to be used for a
4 beneficial use involving a previously established activity or purpose;

5 (ii) The previously established activity or purpose was furnished
6 water through rights applicable to the use of a public body of water
7 that cannot be exercised due to the lack of water arising from natural
8 drought conditions; and

9 (iii) The proposed withdrawal will not reduce flows or levels below
10 essential minimums necessary (A) to assure the maintenance of fisheries
11 requirements, and (B) to protect federal and state interests including,
12 among others, power generation, navigation, and existing water rights;

13 (b) All withdrawal authorizations issued under this section shall
14 contain provisions that allow for termination of withdrawals, in whole
15 or in part, whenever withdrawals will conflict with flows and levels as
16 provided in (a)(iii) of this subsection. Domestic and irrigation uses
17 of public surface and ground waters shall be given priority in
18 determining "beneficial uses." As to water withdrawal and associated
19 works authorized under this subsection, the requirements of chapter
20 43.21C RCW and public bidding requirements as otherwise provided by law
21 are waived and inapplicable. All state and local agencies with
22 authority to issue permits or other authorizations for such works
23 shall, to the extent possible, expedite the processing of the permits
24 or authorizations in keeping with the emergency nature of the requests
25 and shall provide a decision to the applicant within fifteen calendar
26 days of the date of application. All state departments or other
27 agencies having jurisdiction over state or other public lands, if such
28 lands are necessary to effectuate the withdrawal authorizations issued
29 under this subsection, shall provide short-term easements or other
30 appropriate property interest upon the payment of the fair market
31 value. This mandate shall not apply to any lands of the state that are
32 reserved for a special purpose or use that cannot properly be carried
33 out if the property interest were conveyed;

34 (2) Approve a temporary change in purpose, place of use, or point
35 of diversion, consistent with existing state policy allowing transfer
36 or lease of waters between willing parties, as provided for in RCW
37 90.03.380, 90.03.390, and 90.44.100. However, compliance with any
38 requirements of (a) notice of newspaper publication of these sections

1 or (b) the state environmental policy act, chapter 43.21C RCW, is not
2 required when such changes are necessary to respond to drought
3 conditions as determined by the department of ecology. An approval of
4 a temporary change of a water right as authorized under this subsection
5 is not admissible as evidence in either supporting or contesting the
6 validity of water claims in *State of Washington, Department of Ecology*
7 *v. Acquavella*, Yakima county superior court number 77-2-01484-5 or any
8 similar proceeding where the existence of a water right is at issue.

9 (3) Employ additional persons for specified terms of time,
10 consistent with the term of a drought condition, as are necessary to
11 ensure the successful performance of the activities associated with
12 implementing the emergency drought program of this chapter.

13 (4) Revise the drought contingency plan previously developed by the
14 department; and

15 (5) Acquire needed emergency drought-related equipment.

16 NEW SECTION. **Sec. 2.** This act is necessary for the immediate
17 preservation of the public peace, health, or safety, or support of the
18 state government and its existing public institutions, and takes effect
19 immediately.

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