

SSB 6312 - S AMD 107

By Senators Haugen, Hatfield, Ranker, Fraser, Honeyford

ADOPTED 02/13/2012

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** (1) The legislature finds that the water
4 resources act of 1971, chapter 90.54 RCW, contains a list of water
5 policy fundamentals that are to guide the state's water management
6 agency in adopting basin rules to allocate the water resources of the
7 state. In effect since 1971, the unprioritized list of water policy
8 fundamentals include: (a) The allocation of water among potential uses
9 and users is to be based on securing the maximum net benefits to the
10 state; and (b) that adequate supplies of water are to be preserved and
11 protected to satisfy domestic needs. The legislature finds that ready
12 access to sufficient water to fulfill domestic needs has been and
13 continues to be a fundamental public value. The legislature finds that
14 some basin rules adopted or amended after 2006 for areas in the state
15 with moderate to heavy rainfall do not provide adequate water to
16 fulfill the directive of providing adequate water to satisfy domestic
17 needs in rural areas, and instead constrain water use more
18 restrictively than in other basins with similar conditions and levels
19 of precipitation.

20 (2) Further, the legislature finds that state and local governments
21 have established and funded a vast array of environmental and habitat
22 improvement and acquisition programs and that these programs can and
23 should provide environmental, habitat, and instream flow benefits where
24 needed. The legislature acknowledges that the availability of state
25 and local funding for these environmental and habitat programs is
26 dependent on the tax revenues generated by the home construction
27 industry and that available funding has dropped as home construction
28 has declined dramatically in recent years.

29 (3) The purpose of this legislation is to promote reasonable use by
30 the public of the public's water to ensure that sufficient water to

1 serve essential domestic needs be readily available for homes in rural
2 areas where public water service is not readily available. An
3 additional purpose of this legislation is to encourage jobs in, and
4 stimulus to, the home construction industry, in order to produce
5 revenues to support state and local governmental programs and services,
6 including environmental and habitat improvements funded by state and
7 local governments.

8 (4) The legislature finds that the Columbia river basin water
9 supply program, chapter 90.90 RCW, has provided a successful model to
10 addressing the needs of both instream and out-of-stream water needs in
11 that basin. It is the intent of the legislature to establish a similar
12 approach to addressing water supply needs in rural areas within the
13 Skagit river basin.

14 (5) For the reasons stated in this section, the intent of the
15 legislature is for this act to be remedial in nature and apply
16 retroactively and prospectively to basin rules adopted or amended under
17 chapters 90.22 and 90.54 RCW after January 1, 2006, for the Skagit
18 river basin. It is also the intent of the legislature for this act to
19 allow people in rural areas in the Skagit river basin to move forward
20 with construction of their homes in a manner that is sufficiently
21 protective of instream resources and water right holders. It is also
22 the intent of the legislature to provide funding for more coordinated
23 and effective mechanism to protect and, where possible, enhance impacts
24 to stream flows for fish.

25 **Sec. 2.** RCW 90.54.120 and 1971 ex.s. c 225 s 13 are each amended
26 to read as follows:

27 For the purposes of this chapter, unless the context is clearly to
28 the contrary, the following definitions shall be used:

29 (1) "Department" means department of ecology.

30 (2) "Domestic water use" means potable water to satisfy the needs
31 of a household, including water used for drinking, bathing, sanitary
32 purposes, cooking, laundering, watering a lawn and noncommercial
33 garden, care of household pets, and other incidental uses.

34 (3) "Skagit river basin" means water resource inventory areas
35 numbers 3 and 4 established under chapter 173-500 WAC.

36 (4) "Utilize" or "utilization" shall not only mean use of water for
37 such long recognized consumptive or nonconsumptive beneficial purposes

1 as domestic, stock watering, industrial, commercial, agricultural,
2 irrigation, hydroelectric power production, thermal power production,
3 mining, recreational, maintenance of wildlife and fishlife purposes,
4 but includes the retention of water in lakes and streams for the
5 protection of environmental, scenic, aesthetic and related purposes,
6 upon which economic values have not been placed historically and are
7 difficult to quantify.

8 **Sec. 3.** RCW 90.54.020 and 2007 c 445 s 8 are each amended to read
9 as follows:

10 Utilization and management of the waters of the state shall be
11 guided by the following general declaration of fundamentals:

12 (1) Uses of water for domestic, stock watering, industrial,
13 commercial, agricultural, irrigation, hydroelectric power production,
14 mining, fish and wildlife maintenance and enhancement, recreational,
15 and thermal power production purposes, and preservation of
16 environmental and aesthetic values, and all other uses compatible with
17 the enjoyment of the public waters of the state, are declared to be
18 beneficial.

19 (2) Allocation of waters among potential uses and users shall be
20 based generally on the securing of the maximum net benefits for the
21 people of the state. Maximum net benefits shall constitute total
22 benefits less costs including opportunities lost.

23 (3) The quality of the natural environment shall be protected and,
24 where possible, enhanced as follows:

25 (a) Perennial rivers and streams of the state shall be retained
26 with base flows necessary to provide for preservation of wildlife,
27 fish, scenic, aesthetic and other environmental values, and
28 navigational values. Lakes and ponds shall be retained substantially
29 in their natural condition. Withdrawals of water which would conflict
30 therewith shall be authorized only in those situations where it is
31 clear that overriding considerations of the public interest will be
32 served.

33 (b) Waters of the state shall be of high quality. Regardless of
34 the quality of the waters of the state, all wastes and other materials
35 and substances proposed for entry into said waters shall be provided
36 with all known, available, and reasonable methods of treatment prior to
37 entry. Notwithstanding that standards of quality established for the

1 waters of the state would not be violated, wastes and other materials
2 and substances shall not be allowed to enter such waters which will
3 reduce the existing quality thereof, except in those situations where
4 it is clear that overriding considerations of the public interest will
5 be served. Technology-based effluent limitations or standards for
6 discharges for municipal water treatment plants located on the
7 Chehalis, Columbia, Cowlitz, Lewis, or Skagit river shall be adjusted
8 to reflect credit for substances removed from the plant intake water
9 if:

10 (i) The municipality demonstrates that the intake water is drawn
11 from the same body of water into which the discharge is made; and

12 (ii) The municipality demonstrates that no violation of receiving
13 water quality standards or appreciable environmental degradation will
14 result.

15 (4) The development of multipurpose water storage facilities shall
16 be a high priority for programs of water allocation, planning,
17 management, and efficiency. The department, other state agencies, and
18 local governments(~~(, and planning units formed under section 107 or 108~~
19 ~~of this act)~~) shall evaluate the potential for the development of new
20 storage projects and the benefits and effects of storage in reducing
21 damage to stream banks and property, increasing the use of land,
22 providing water for municipal, industrial, agricultural, power
23 generation, and other beneficial uses, and improving stream flow
24 regimes for fisheries and other instream uses.

25 (5)(a) Adequate and safe supplies of water shall be preserved and
26 protected in potable condition to satisfy (~~human~~) domestic water use
27 needs.

28 (b) Rules adopted by the department under this chapter for the
29 Skagit river basin may not constrain new groundwater withdrawals for
30 domestic uses to less than three hundred fifty gallons per day per
31 dwelling unit, if the dwelling utilizes an on-site septic system and a
32 water supply from a public water system cannot be provided pursuant to
33 RCW 43.20.260.

34 (6) Multiple-purpose impoundment structures are to be preferred
35 over single-purpose structures. Due regard shall be given to means and
36 methods for protection of fishery resources in the planning for and
37 construction of water impoundment structures and other artificial
38 obstructions.

1 (7) Federal, state, and local governments, individuals,
2 corporations, groups, and other entities shall be encouraged to carry
3 out practices of conservation as they relate to the use of the waters
4 of the state. The department may list or quantify by water resource
5 inventory area the instream flow, groundwater recharge, and fish
6 habitat improvements that result from investments by federal, state,
7 and local governments in tax-supported programs. The department may
8 apply for funding from state and federal sources for projects and
9 activities that enhance flow and habitat conditions in rivers and
10 streams to address areas of concern including those that arise from the
11 use of water authorized under subsection (5)(b) of this section.

12 (8)(a) Funding provided to the department's water acquisition
13 program to offset impacts to stream flows in rural areas, including
14 those that result from subsection (5)(b) of this section, must be used
15 to protect, and where possible enhance, instream flows in rural areas
16 by acquiring water rights, incentivizing water conservation, and low
17 impact development practices, and promoting any other instream flow
18 enhancement projects, including but not limited to collection,
19 retention, and release of rainwater, constructing ponds, wetlands, and
20 other water impoundments, and storm water infiltration.

21 (b) The department shall permanently dedicate water developed or
22 acquired for the purposes in (a) of this subsection to the state's
23 trust water rights program, chapter 90.42 RCW. The department shall
24 give preference to instream flow improvement proposals in the Skagit
25 river basin.

26 (9) In addition to traditional development approaches, improved
27 water use efficiency, conservation, and use of reclaimed water shall be
28 emphasized in the management of the state's water resources and in some
29 cases will be a potential new source of water with which to meet future
30 needs throughout the state. Use of reclaimed water shall be encouraged
31 through state and local planning and programs with incentives for state
32 financial assistance recognizing programs and plans that encourage the
33 use of conservation and reclaimed water use, and state agencies shall
34 continue to review and reduce regulatory barriers and streamline
35 permitting for the use of reclaimed water where appropriate.

36 ((+8)) (10) Development of water supply systems, whether publicly
37 or privately owned, which provide water to the public generally in
38 regional areas within the state shall be encouraged. Development of

1 water supply systems for multiple domestic use which will not serve the
2 public generally shall be discouraged where water supplies are
3 available from water systems serving the public.

4 ~~((+9) Full)~~ (11) Proper and pragmatic recognition shall be given
5 in the administration of water allocation and use programs to the
6 natural interrelationships of surface and groundwaters including: (a)
7 Providing recognition for the recharge of groundwaters by home septic
8 systems for indoor water uses; and (b) providing recognition that there
9 are widely varying degrees of potential impact to surface water from
10 groundwater withdrawals that are generally less than a one-to-one ratio
11 depending on a number of factors including, but not limited to, the
12 geology and porosity of underground formations, well depth, withdrawing
13 water from deeper aquifers rather than shallow aquifers, distance of
14 the well from surface water bodies, season of use, rainfall, and
15 temperature.

16 ~~((+10))~~ (12) Expressions of the public interest will be sought at
17 all stages of water planning and allocation discussions.

18 ~~((+11))~~ (13) Water management programs, including but not limited
19 to, water quality, flood control, drainage, erosion control and storm
20 runoff are deemed to be in the public interest.

21 **Sec. 4.** RCW 90.54.050 and 1997 c 439 s 2 and 1997 c 32 s 3 are
22 each reenacted and amended to read as follows:

23 (1)(a) In conjunction with the programs provided for in RCW
24 90.54.040(1), whenever it appears necessary to the director in carrying
25 out the policy of this chapter, the department may by rule adopted
26 pursuant to chapter 34.05 RCW:

27 ~~((+1))~~ (i) Reserve and set aside waters for beneficial utilization
28 in the future, and

29 ~~((+2))~~ (ii) When sufficient information and data are lacking to
30 allow for the making of sound decisions, withdraw various waters of the
31 state from additional appropriations until such data and information
32 are available.

33 (b) In reserving and setting aside water in accordance with (a)(i)
34 of this subsection, and in withdrawing waters of the state from
35 additional appropriation under this title, any action under this
36 section shall be consistent with the directive in RCW 90.54.020(5)(b).

37 Before proposing the adoption of rules to withdraw waters of the state

1 from additional appropriation, the department shall consult with the
2 standing committees of the house of representatives and the senate
3 having jurisdiction over water resource management issues.

4 (2) Prior to the adoption of a rule under this section, the
5 department shall conduct a public hearing in each county in which
6 waters relating to the rule are located. The public hearing shall be
7 preceded by a notice placed in a newspaper of general circulation
8 published within each of said counties. Rules adopted hereunder shall
9 be subject to review in accordance with the provisions of RCW
10 34.05.240.

11 NEW SECTION. **Sec. 5.** A new section is added to chapter 90.44 RCW
12 to read as follows:

13 (1) Each parcel of property that is located within the Skagit river
14 basin is entitled to a withdrawal of public groundwater for domestic
15 uses in an amount not less than three hundred fifty gallons per day per
16 dwelling unit, if the dwelling utilizes an on-site septic system and a
17 water supply from a public water system cannot be provided pursuant to
18 RCW 43.20.260, and, to the extent it is regularly used beneficially,
19 shall be entitled to a right equal to that established by a permit
20 issued under the provisions of this chapter.

21 (2) Nothing in chapter . . . , Laws of 2012 (this act) is intended
22 to alter, limit, impair, or amend the ability to withdraw water
23 otherwise allowed under the exemption provided in RCW 90.44.050.

24 NEW SECTION. **Sec. 6.** A new section is added to chapter 90.54 RCW
25 to read as follows:

26 (1) Each parcel of property that is located within the Skagit river
27 basin is entitled to a withdrawal of public groundwater for domestic
28 uses in an amount not less than three hundred fifty gallons per day per
29 dwelling unit, if the dwelling utilizes an on-site septic system and a
30 water supply from a public water system cannot be provided pursuant to
31 RCW 43.20.260, and, to the extent it is regularly used beneficially,
32 shall be entitled to a right equal to that established by a permit
33 issued under the provisions of chapter 90.44 RCW.

34 (2) Nothing in chapter . . . , Laws of 2012 (this act) is intended
35 to alter, limit, impair, or amend the ability to withdraw water
36 otherwise allowed under the exemption provided in RCW 90.44.050.

1 **Sec. 7.** RCW 19.27.097 and 2010 c 271 s 302 are each amended to
2 read as follows:

3 (1)(a) Each applicant for a building permit of a building
4 necessitating potable water shall provide evidence of an adequate water
5 supply for the intended use of the building. Evidence may be in the
6 form of a water right permit from the department of ecology, a letter
7 from an approved water purveyor stating the ability to provide water,
8 or another form sufficient to verify the existence of an adequate water
9 supply. In addition to other authorities, the county or city may
10 impose conditions on building permits requiring connection to an
11 existing public water system where the existing system is willing and
12 able to provide safe and reliable potable water to the applicant with
13 reasonable economy and efficiency. An application for a water right
14 shall not be sufficient proof of an adequate water supply.

15 (b) For building permits in the Skagit river basin, for single-
16 family dwellings that will utilize an on-site septic system and where
17 water supply from a public water system cannot be provided pursuant to
18 RCW 43.20.260, the applicant satisfies the requirement to show that
19 water is legally available by submitting a signed declaration of intent
20 to comply with RCW 90.54.020(5)(b). In addition, the local
21 jurisdiction may require proof that water is physically available and
22 that it meets applicable drinking water quality standards.

23 (2) Within counties not required or not choosing to plan pursuant
24 to RCW 36.70A.040, the county and the state may mutually determine
25 those areas in the county in which the requirements of subsection (1)
26 of this section shall not apply. The departments of health and ecology
27 shall coordinate on the implementation of this section. Should the
28 county and the state fail to mutually determine those areas to be
29 designated pursuant to this subsection, the county may petition the
30 department of (~~general administration~~) enterprise services to mediate
31 or, if necessary, make the determination.

32 (3) Buildings that do not need potable water facilities are exempt
33 from the provisions of this section. The department of ecology, after
34 consultation with local governments, may adopt rules to implement this
35 section, which may recognize differences between high-growth and low-
36 growth counties.

1 NEW SECTION. **Sec. 8.** Sections 3(5) and 4(3) of this act apply
2 retroactively to January 1, 2001, as well as prospectively."

SSB 6312 - S AMD

By Senators Haugen, Hatfield, Ranker, Fraser, Honeyford

ADOPTED 02/13/2012

3 On page 1, at the beginning of line 2 of the title, strike the
4 remainder of the title and insert "domestic water for home
5 construction; amending RCW 90.54.120, 90.54.020, and 19.27.097;
6 reenacting and amending RCW 90.54.050; adding a new section to chapter
7 90.44 RCW; adding a new section to chapter 90.54 RCW; and creating new
8 sections."

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