
SUBSTITUTE HOUSE BILL 1350

State of Washington 63rd Legislature 2013 Regular Session

By House Agriculture & Natural Resources (originally sponsored by Representatives Chandler and Tharinger)

READ FIRST TIME 02/22/13.

1 AN ACT Relating to providing options for local communities to
2 balance growth of the community with water resource goals; amending RCW
3 90.42.120, 58.17.110, and 90.44.050; adding a new section to chapter
4 36.01 RCW; adding new sections to chapter 90.54 RCW; and creating new
5 sections.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 36.01 RCW
8 to read as follows:

9 (1) A county legislative authority may by ordinance establish
10 quantity limits for new uses of water related to single or group
11 domestic uses in an amount not exceeding five thousand gallons a day
12 that are lower than those provided in RCW 90.44.050.

13 (2) Quantity limits established under this section must be set
14 either:

15 (a) No lower than three hundred fifty gallons per day per residence
16 for single or group domestic use; or

17 (b) To an amount less than three hundred fifty gallons per day if
18 that amount is based on a finding that justifies a lower amount as
19 sufficient to satisfy requirements for public health and safety.

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 90.54 RCW
2 to read as follows:

3 (1) In watersheds where the department has closed or partially
4 closed a basin to further appropriation of groundwater, or in areas
5 where a county anticipates a closure or partial closure, the county
6 legislative authority may create a limited purpose local water bank
7 consistent with section 3 of this act. In considering whether a water
8 bank would be a viable tool in the area, the county legislative
9 authority shall consider whether there are a sufficient number of
10 existing water rights in the area to make a water bank successful.

11 (2) Water banks created under this section serve the purpose of
12 providing mitigation credits for existing interruptible or new exempt
13 groundwater withdrawals. The credit must be granted on a one-to-one
14 ratio. The maximum amount of credit may not exceed, as applicable, the
15 following:

16 (a) Five thousand gallons per day;

17 (b) Lower than three hundred fifty gallons per day per residence
18 for single or group domestic use; or

19 (c) An amount less than three hundred fifty gallons per day if that
20 amount is based on a finding that justifies a lower amount as
21 sufficient to satisfy requirements for public health and safety.

22 (3) A seasonal water right must be prorated on a basis of the total
23 permitted withdrawal divided by three hundred sixty-five days to arrive
24 at the total expressed gallons per day.

25 (4) A water right or a portion of a water right placed into a
26 limited purpose local water bank must be demonstrated to be in
27 hydraulic continuity with the groundwater to be withdrawn by the new
28 user and be shown as a real water right by the department, per the
29 department's transfer processes, before being made available. Water
30 rights placed into a limited purpose local water bank may only be
31 purchased on a permanent basis and only for purposes of mitigating
32 exempt withdrawals consistent with subsection (2) of this section.

33 (5) Water credits purchased through a limited purpose local water
34 bank must be affixed to a specific parcel of land to mitigate
35 interruptible or new groundwater withdrawals consistent with this
36 section and section 3 of this act. Purchased water credits are
37 assignable with conveyance of title of the new land parcel to which it
38 is affixed, but may not be transferred to another parcel. However,

1 nothing in this section prevents a parcel to which a water credit is
2 affixed to be subdivided and the water credit prorated amongst the
3 newly created parcels, as long as no parcel is:

4 (a) No lower than three hundred fifty gallons per day per residence
5 for single or group domestic use; or

6 (b) An amount less than three hundred fifty gallons per day if that
7 amount is based on a finding that justifies a lower amount as
8 sufficient to satisfy requirements for public health and safety.

9 (6) Water credits purchased from a bank must be purchased in the
10 form of a certificate expressed in a maximum gallons per day withdrawal
11 format. The price of the certificate is determined by the water right
12 holder and is a one-time purchase price.

13 NEW SECTION. **Sec. 3.** A new section is added to chapter 90.54 RCW
14 to read as follows:

15 (1) A limited purpose local water bank may be created by ordinance
16 adopted by the county legislative authority consistent with section 2
17 of this act. An ordinance may be adopted only after providing a
18 thirty-day comment period and at least one public hearing located
19 within the boundaries of the watershed, or if no suitable location
20 exists, at the county seat.

21 (2) The county legislative authority may administer a limited
22 purpose local water bank or may contract with a water conservancy
23 board, watershed planning group, conservation district, or other water
24 purveyor to administer the local water bank consistent with RCW
25 90.42.120(5). The cost of administering the limited purpose local
26 water bank may be supported by general fund moneys, real estate excise
27 tax revenues, or from fees added to the price of water credits
28 purchased from the bank, or a combination of these sources. Fees
29 affixed to the water credit price may be calculated to recover the
30 actual costs of the purchase price of the water credits.

31 (3) Nothing in this section or section 2 of this act may be
32 construed to grant the local legislative authority or agency contracted
33 to administer the limited purpose local water bank any authority to
34 place conditions on the use of the water credits purchased beyond those
35 found in existing law or this section.

1 **Sec. 4.** RCW 90.42.120 and 2003 c 144 s 4 are each amended to read
2 as follows:

3 (1) The department shall transfer a water right or portion thereof
4 being administered for water banking purposes from the trust water
5 (~~(rights)~~) rights program to a third party upon occurrence of all of
6 the following:

7 (a) The department receives a request for transfer of a water right
8 or portion thereof currently administered by the department for water
9 banking purposes;

10 (b) The request is consistent with any previous review under RCW
11 90.03.380 of the water right and future temporary or permanent
12 beneficial uses;

13 (c) The request is consistent with any condition, limitation, or
14 agreement affecting the water right, including but not limited to any
15 trust water right transfer agreement executed at the time the water
16 right was transferred to the trust water rights program; and

17 (d) The request is accompanied by and is consistent with an
18 assignment of interest or portion thereof from a person or entity
19 retaining an interest in the trust water right or portion thereof to
20 the party requesting transfer of the water right or portion thereof.

21 (2) The priority date of the water right or portion thereof
22 transferred by the department from the trust water (~~(rights)~~) rights
23 program for water banking purposes shall be the priority date of the
24 underlying water right.

25 (3) The department shall issue documentation for that water right
26 or portion thereof to the new water right holder based on the
27 requirements applicable to the transfer of other water rights from the
28 trust water rights program. Such documentation shall include a
29 description of the property to which the water right will be
30 appurtenant after the water right or portion thereof is transferred
31 from the trust water (~~(rights)~~) rights program to a third party.

32 (4) The department's decision on the transfer of a water right or
33 portion thereof from the trust water (~~(rights)~~) rights program for
34 water banking purposes may be appealed to the pollution control
35 hearings board under RCW 43.21B.230, or to a superior court conducting
36 a general adjudication under RCW 90.03.210.

37 (5) In determining the price that the recipient of a transferred
38 water right must pay in order to participate in a water banking

1 program, the administer of the water bank must consider, and
2 proportionally set costs based on, the depth of the applicant's
3 proposed well and the distance of the proposed well from any surface
4 water bodies.

5 **Sec. 5.** RCW 58.17.110 and 1995 c 32 s 3 are each amended to read
6 as follows:

7 (1) The city, town, or county legislative body shall inquire into
8 the public use and interest proposed to be served by the establishment
9 of the subdivision and dedication. It shall determine: (a) If
10 appropriate provisions are made for, but not limited to, the public
11 health, safety, and general welfare, for open spaces, drainage ways,
12 streets or roads, alleys, other public ways, transit stops, potable
13 water supplies, sanitary wastes, parks and recreation, playgrounds,
14 schools and schoolgrounds, and shall consider all other relevant facts,
15 including sidewalks and other planning features that (~~(assure)~~) ensure
16 safe walking conditions for students who only walk to and from school;
17 and (b) whether the public interest will be served by the subdivision
18 and dedication.

19 (2)~~(a)~~ A proposed subdivision and dedication shall not be approved
20 unless the city, town, or county legislative body makes written
21 findings that: (~~(a)~~) (i) Appropriate provisions are made for the
22 public health, safety, and general welfare and for such open spaces,
23 drainage ways, streets or roads, alleys, other public ways, transit
24 stops, potable water supplies, sanitary wastes, parks and recreation,
25 playgrounds, schools and schoolgrounds and all other relevant facts,
26 including sidewalks and other planning features that (~~(assure)~~) ensure
27 safe walking conditions for students who only walk to and from school;
28 and (~~(b)~~) (ii) the public use and interest will be served by the
29 platting of such subdivision and dedication. If it finds that the
30 proposed subdivision and dedication make such appropriate provisions
31 and that the public use and interest will be served, then the
32 legislative body shall approve the proposed subdivision and dedication.
33 Dedication of land to any public body, provision of public improvements
34 to serve the subdivision, and/or impact fees imposed under RCW
35 82.02.050 through 82.02.090 may be required as a condition of
36 subdivision approval. Dedications shall be clearly shown on the final
37 plat. No dedication, provision of public improvements, or impact fees

1 imposed under RCW 82.02.050 through 82.02.090 shall be allowed that
2 constitutes an unconstitutional taking of private property. The
3 legislative body shall not as a condition to the approval of any
4 subdivision require a release from damages to be procured from other
5 property owners.

6 (b)(i) Permit exempt wells authorized under RCW 90.44.050 may be
7 used by a city, town, or county legislative body to satisfy the
8 requirements of this section for the appropriate provision of potable
9 water to a subdivision as long as total withdrawals from the wells do
10 not exceed the daily maximum withdrawals allowed under RCW 90.44.050
11 and do not:

12 (A) Service a project footprint larger than forty acres if the
13 wells will be the only source or water available to the project; or

14 (B) Service a project footprint larger than twenty acres if there
15 are other water sources available to the project for lawn, garden, and
16 other outside watering purposes.

17 (ii) For subdivisions that are proposed with a project footprint
18 greater than those identified in (b)(i) of this subsection, separate
19 permit exempt wells must be made available to service each additional
20 forty or twenty acre increment of project footprint, whichever is
21 appropriate under (b)(i) of this subsection, so approval by the city,
22 town, or county legislative body may be granted.

23 (3) If the preliminary plat includes a dedication of a public park
24 with an area of less than two acres and the donor has designated that
25 the park be named in honor of a deceased individual of good character,
26 the city, town, or county legislative body must adopt the designated
27 name.

28 **Sec. 6.** RCW 90.44.050 and 2003 c 307 s 1 are each amended to read
29 as follows:

30 (1) Except as provided in section 1 of this act and RCW 58.17.110,
31 after June 6, 1945, no withdrawal of public groundwaters of the state
32 shall be begun, nor shall any well or other works for such withdrawal
33 be constructed, unless an application to appropriate such waters has
34 been made to the department and a permit has been granted by it as
35 herein provided: EXCEPT, HOWEVER, That any withdrawal of public
36 groundwaters for stock-watering purposes, or for the watering of a lawn
37 or of a noncommercial garden not exceeding one-half acre in area, or

1 for single or group domestic uses in an amount not exceeding five
2 thousand gallons a day, or as provided in RCW 90.44.052, or for an
3 industrial purpose in an amount not exceeding five thousand gallons a
4 day, is and shall be exempt from the provisions of this section, but,
5 to the extent that it is regularly used beneficially, shall be entitled
6 to a right equal to that established by a permit issued under the
7 provisions of this chapter: PROVIDED, HOWEVER, That the department
8 from time to time may require the person or agency making any such
9 small withdrawal to furnish information as to the means for and the
10 quantity of that withdrawal: PROVIDED, FURTHER, That at the option of
11 the party making withdrawals of groundwaters of the state not exceeding
12 five thousand gallons per day, applications under this section or
13 declarations under RCW 90.44.090 may be filed and permits and
14 certificates obtained in the same manner and under the same
15 requirements as is in this chapter provided in the case of withdrawals
16 in excess of five thousand gallons a day.

17 (2)(a) The department may not require withdrawals of groundwater to
18 be metered or measured for wells authorized under the provisions of
19 this section constructed prior to January 1, 2012, for single or group
20 domestic uses that do not exceed withdrawals of five thousand gallons
21 a day.

22 (b) This subsection does not apply to wells the department required
23 to be metered or measured prior to January 1, 2012.

24 NEW SECTION. Sec. 7. (1) By passing this act, it is not the
25 intent of the legislature to change, alter, or otherwise affect the
26 application of RCW 90.44.050 or any of the exemptions provided in that
27 statute beyond the plain meaning of the language provided in section 2
28 of this act and added to RCW 58.17.110.

29 (2) It is the intent of this act to allow counties the authority
30 and option to balance growth of the community with water resource goals
31 by addressing future development criteria in regards to exempt well
32 withdrawals as per section 5 of this act. As to sections 1, 2, and 3
33 of this act, it is the intent of this act to allow counties the
34 authority and option to balance growth of the community with water
35 resource goals by allowing allocation for the best use of the water
36 resources available.

1 (3) No person, judicial body, or administrative agency should
2 interpret any provisions of this act in a manner that is inconsistent
3 with these statements of intent.

4 NEW SECTION. **Sec. 8.** (1) Section 5 of this act applies to
5 subdivisions of land prospectively only and not retroactively. It
6 applies only to causes of action that arise on or after the effective
7 date of this section.

8 (2) Sections 1, 2, and 3 of this act may be applied to any or all
9 existing divisions of land that are not developed as of the effective
10 date of this section.

11 (3) Section 5 of this act is to be applied retroactively to any
12 water banks established prior to January 1, 2010.

--- END ---