
ENGROSSED SUBSTITUTE SENATE BILL 5407

State of Washington

64th Legislature

2015 Regular Session

By Senate Agriculture, Water & Rural Economic Development (originally sponsored by Senators Pearson, Bailey, and Benton)

READ FIRST TIME 02/13/15.

1 AN ACT Relating to the effects of instream flow rules on water
2 use; amending RCW 90.22.030 and 90.54.020; and creating a new
3 section.

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

5 **Sec. 1.** RCW 90.22.030 and 1988 c 127 s 81 are each amended to
6 read as follows:

7 (1) The establishment of levels and flows pursuant to RCW
8 90.22.010 shall in no way affect existing water and storage rights
9 and the use thereof, including but not limited to rights relating to
10 the operation of any hydroelectric or water storage reservoir or
11 related facility. No right to divert or store public waters shall be
12 granted by the department of ecology which shall conflict with
13 regulations adopted pursuant to RCW 90.22.010 and 90.22.020
14 establishing flows or levels.

15 (2)(a) Except as provided in (b) of this subsection, levels and
16 flows established pursuant to this chapter or chapter 90.54 RCW do
17 not in any way affect any groundwater withdrawal exempt from the
18 permit requirement in RCW 90.44.050 on any lot of record lawfully
19 established as of the effective date of this section.

20 (b) Levels and flows established pursuant to this chapter or
21 chapter 90.54 RCW may limit a groundwater withdrawal from permit

1 exempt wells meeting the requirements of (a) of this subsection only
2 if the department demonstrates that the particular groundwater
3 withdrawal from the specific permit exempt well at issue, by itself
4 and not when considered as part of the aggregate of groundwater
5 withdrawals, will in fact cause impairment to levels and flows.

6 (3) All regulations establishing flows or levels shall be filed
7 in a "Minimum Water Level and Flow Register" of the department of
8 ecology.

9 **Sec. 2.** RCW 90.54.020 and 2007 c 445 s 8 are each amended to
10 read as follows:

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

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

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

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

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

36 (b) Waters of the state shall be of high quality. Regardless of
37 the quality of the waters of the state, all wastes and other
38 materials and substances proposed for entry into said waters shall be
39 provided with all known, available, and reasonable methods of

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

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

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

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

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

28 (6) Multiple-purpose impoundment structures are to be preferred
29 over single-purpose structures. Due regard shall be given to means
30 and methods for protection of fishery resources in the planning for
31 and construction of water impoundment structures and other artificial
32 obstructions.

33 (7) Federal, state, and local governments, individuals,
34 corporations, groups and other entities shall be encouraged to carry
35 out practices of conservation as they relate to the use of the waters
36 of the state. In addition to traditional development approaches,
37 improved water use efficiency, conservation, and use of reclaimed
38 water shall be emphasized in the management of the state's water
39 resources and in some cases will be a potential new source of water
40 with which to meet future needs throughout the state. Use of

1 reclaimed water shall be encouraged through state and local planning
2 and programs with incentives for state financial assistance
3 recognizing programs and plans that encourage the use of conservation
4 and reclaimed water use, and state agencies shall continue to review
5 and reduce regulatory barriers and streamline permitting for the use
6 of reclaimed water where appropriate.

7 (8) Development of water supply systems, whether publicly or
8 privately owned, which provide water to the public generally in
9 regional areas within the state shall be encouraged. Development of
10 water supply systems for multiple domestic use which will not serve
11 the public generally shall be discouraged where water supplies are
12 available from water systems serving the public.

13 (9) Full recognition shall be given in the administration of
14 water allocation and use programs to the natural interrelationships
15 of surface and groundwaters.

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

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

21 NEW SECTION. **Sec. 3.** Within one year from the effective date of
22 this section, the department of ecology must review the Skagit river
23 basin instream resources protection program rule, chapter 173-503
24 WAC, to determine whether the rule has set aside sufficient water
25 reservations to satisfy year-round human domestic needs in designated
26 water resource inventory areas 3 and 4. If the department of
27 ecology's review demonstrates that adequate reserves have not been
28 made, the department must take appropriate action to amend the rule,
29 consistent with the requirements of RCW 90.54.020(3)(a).

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