
SENATE BILL 5261

State of Washington

69th Legislature

2025 Regular Session

By Senators Shewmake, Chapman, and Nobles

Read first time 01/14/25. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to issuing water right permits for nonconsumptive
2 hydropower use in water resource inventory areas in which minimum
3 instream flows are not being met; and amending RCW 90.54.020 and
4 90.03.247.

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

6 **Sec. 1.** RCW 90.54.020 and 2007 c 445 s 8 are each amended to
7 read as follows:

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

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

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

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

3 (a) Perennial rivers and streams of the state shall be retained
4 with base flows necessary to provide for preservation of wildlife,
5 fish, scenic, aesthetic and other environmental values, and
6 navigational values. Lakes and ponds shall be retained substantially
7 in their natural condition. (~~Withdrawals of water which would~~
8 ~~conflict therewith shall be authorized only in those situations where~~
9 ~~it is clear that overriding considerations of the public interest~~
10 ~~will be served.~~) Permanent withdrawals of water that would conflict
11 therewith may be authorized only for applications submitted and
12 approved pursuant to RCW 90.03.247.

13 (b) Waters of the state shall be of high quality. Regardless of
14 the quality of the waters of the state, all wastes and other
15 materials and substances proposed for entry into said waters shall be
16 provided with all known, available, and reasonable methods of
17 treatment prior to entry. Notwithstanding that standards of quality
18 established for the waters of the state would not be violated, wastes
19 and other materials and substances shall not be allowed to enter such
20 waters which will reduce the existing quality thereof, except in
21 those situations where it is clear that overriding considerations of
22 the public interest will be served. Technology-based effluent
23 limitations or standards for discharges for municipal water treatment
24 plants located on the Chehalis, Columbia, Cowlitz, Lewis, or Skagit
25 river shall be adjusted to reflect credit for substances removed from
26 the plant intake water if:

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

29 (ii) The municipality demonstrates that no violation of receiving
30 water quality standards or appreciable environmental degradation will
31 result.

32 (4) The development of multipurpose water storage facilities
33 shall be a high priority for programs of water allocation, planning,
34 management, and efficiency. The department, other state agencies, and
35 local governments (~~(, and planning units formed under section 107 or~~
36 ~~108 of this act)) shall evaluate the potential for the development of
37 new storage projects and the benefits and effects of storage in
38 reducing damage to stream banks and property, increasing the use of
39 land, providing water for municipal, industrial, agricultural, power~~

1 generation, and other beneficial uses, and improving streamflow
2 regimes for fisheries and other instream uses.

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

5 (6) Multiple-purpose impoundment structures are to be preferred
6 over single-purpose structures. Due regard shall be given to means
7 and methods for protection of fishery resources in the planning for
8 and construction of water impoundment structures and other artificial
9 obstructions.

10 (7) Federal, state, and local governments, individuals,
11 corporations, groups and other entities shall be encouraged to carry
12 out practices of conservation as they relate to the use of the waters
13 of the state. In addition to traditional development approaches,
14 improved water use efficiency, conservation, and use of reclaimed
15 water shall be emphasized in the management of the state's water
16 resources and in some cases will be a potential new source of water
17 with which to meet future needs throughout the state. Use of
18 reclaimed water shall be encouraged through state and local planning
19 and programs with incentives for state financial assistance
20 recognizing programs and plans that encourage the use of conservation
21 and reclaimed water use, and state agencies shall continue to review
22 and reduce regulatory barriers and streamline permitting for the use
23 of reclaimed water where appropriate.

24 (8) Development of water supply systems, whether publicly or
25 privately owned, which provide water to the public generally in
26 regional areas within the state shall be encouraged. Development of
27 water supply systems for multiple domestic use which will not serve
28 the public generally shall be discouraged where water supplies are
29 available from water systems serving the public.

30 (9) Full recognition shall be given in the administration of
31 water allocation and use programs to the natural interrelationships
32 of surface and groundwaters.

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

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

38 **Sec. 2.** RCW 90.03.247 and 2018 c 1 s 302 are each amended to
39 read as follows:

1 (1) Whenever an application for a permit to make beneficial use
2 of public waters is approved relating to a stream or other water body
3 for which minimum flows or levels have been adopted and are in effect
4 at the time of approval, the permit shall be conditioned to: (a)
5 Protect the levels or flows; or (b) require water resource mitigation
6 of impacts to instream flows and closed surface water bodies for
7 water resource mitigation pilot projects authorized under RCW
8 90.94.090.

9 (2) No agency may establish minimum flows and levels or similar
10 water flow or level restrictions for any stream or lake of the state
11 other than the department of ecology whose authority to establish is
12 exclusive, as provided in this chapter (~~(90.03—RCW)~~) and RCW
13 90.22.010 and 90.54.040. The provisions of other statutes, including
14 but not limited to chapter 43.21C RCW, may not be interpreted in a
15 manner that is inconsistent with this section. In establishing such
16 minimum flows, levels, or similar restrictions, the department shall,
17 during all stages of development by the department of ecology of
18 minimum flow proposals, consult with, and carefully consider the
19 recommendations of, the department of fish and wildlife, the
20 department of commerce, the department of agriculture, and
21 representatives of the affected Indian tribes. Nothing herein shall
22 preclude the department of fish and wildlife, the department of
23 commerce, or the department of agriculture from presenting its views
24 on minimum flow needs at any public hearing or to any person or
25 agency, and the department of fish and wildlife, the department of
26 commerce, and the department of agriculture are each empowered to
27 participate in proceedings of the federal energy regulatory
28 commission and other agencies to present its views on minimum flow
29 needs.

30 (3) The department may issue a water right permit for a
31 nonconsumptive hydropower use in a water resource inventory area in
32 which minimum instream flows adopted pursuant to chapter 90.22 or
33 90.54 RCW are not being met, or in a water body closed to further
34 appropriation, if:

35 (a) The water diverted is returned to the same stream reach;

36 (b) The project has an installed power generation capacity of
37 less than 25 kilowatts;

38 (c) The department, after carefully considering the
39 recommendation of the department of fish and wildlife, determines

1 that there would be no net detrimental impact to fish and related
2 aquatic resources; and

3 (d) The department has consulted with all federally recognized
4 Indian tribes with treaty fishing rights at usual and accustomed
5 places within the water resource inventory area.

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