

election ballot alphabetically in groups under the designation of the respective titles of the offices for which they are candidates.

NEW SECTION. Sec. 59. If any provision of this 1969 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected.

Passed the Senate May 12, 1969  
Passed the House May 12, 1969  
Approved by the Governor May 23, 1969, with the exception of a certain item in Section 50 which is vetoed  
Filed in office of Secretary of State May 23, 1969

NOTE: Governor's explanation of partial veto is as follows:  
"...This bill is an omnibus education bill. Section 46 through 50 contain provisions which authorize old age annuities and retirement income plans for community college employees. In Section 50 an erroneous internal reference is made to another section of the act. To cure this technical error I have vetoed the cross referenced provision in Section 50.

With the exception of that one item, the remainder of this bill is approved."

CHAPTER 284  
[House Bill No. 310]  
WATER AND WATER RESOURCES

AN ACT Relating to water and water resources; authorizing the making of grants to municipal and public corporations and political subdivisions for construction of water pollution control projects; authorizing the establishment of minimum flows and levels on public waters; authorizing the issuance of certain regulatory orders relating to water and water resources and prescribing the methods of review therefrom; directing the registration and regulation of certain water rights claims; adding a new section to chapter 90.48 RCW; adding new sections to chapter 242, Laws of 1967 and chapter 43.27A RCW; adding new sections to chapter 233, Laws of 1967 and chapter 90.14 RCW; adding a new chapter to Title 90 RCW; amending section 28, chapter 13, Laws of 1967 and RCW 90.48.290; repealing section 1, chapter 81, Laws of 1967 and RCW 43.21.145; repealing sections 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12, chapter 233, Laws of 1967 and RCW 90.14.030, 90.14.040, 90.14.050, 90.14.060,

90.14.070, 90.14.080, 90.14.090, 90.14.100, 90.14.110 and 90-  
.14.120; defining a crime; and prescribing penalties.

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

Section 1. Section 28, chapter 13, Laws of 1967 and RCW 90.48-  
.290 are each amended to read as follows:

The commission is authorized to make and administer grants within appropriations authorized by the legislature to any (~~muni-  
cipality~~) municipal or public corporation, or political subdivision within the state for the purpose of aiding in the construction of water pollution control projects necessary to prevent the discharge of untreated or inadequately treated sewage or other waste into the waters of the state including, but not limited to, projects for the control of storm or surface waters which will provide for the removal of waste or polluting materials therefrom.

Grants so made by the commission shall be subject to the following limitations:

(1) No grant shall be made in an amount which exceeds the recipient's contribution to the estimated cost of the project: PROVIDED, That the following shall be considered a part of the recipient's contribution:

(a) Any grant received by the recipient from the federal government pursuant to section 8 (f) of the Federal Water Pollution Control Act (33 U.S.C. 466) for the project (~~shall-be-considered-as part-of-the-recipient's-contribution~~);

(b) Any expenditure which is made by any municipal or public corporation, or political subdivision within the state as a part of a joint effort with the recipient to carry out the project and which has not been used as a matching contribution for another grant made pursuant to this chapter, and

(c) Any expenditure for the project made by the recipient out of moneys advanced by the commission from a revolving fund and repayable to said fund.

(2) No grant shall be made for any project which does not

qualify for and receive a grant of federal funds under the provisions of the Federal Water Pollution Control Act as now or hereafter amended: PROVIDED, That this restriction shall not apply to state grants made in any biennium over and above the amount of such grants required to match all federal funds allocated to the state for such biennium.

(3) No grant shall be made to any (~~municipality~~) municipal or public corporation, or political subdivision for any project located within a drainage basin (~~for which~~) unless the commission shall have previously adopted a comprehensive water pollution control and abatement plan and unless the project is found by the commission to conform with such basin comprehensive plan: PROVIDED, That the requirement for a project to conform to a comprehensive water pollution control and abatement plan may be waived by the commission or director for any grant application filed with the commission prior to July 1, 1974, in those situations where the commission or director finds the public interest would be served better by approval of any grant application made prior to adoption of such plan than by its denial.

(4) Recipients of grants shall meet such qualifications and follow such procedures in applying for grants as shall be established by the commission.

(5) Grants may be made to reimburse recipients for expenditures made after July 1, 1967 for projects which meet the requirements of this 1969 amendatory act and were commenced after the recipient had filed a grant application with the commission.

NEW SECTION. Sec. 2. There is added to chapter 90.48 RCW a new section to read as follows:

The commission shall submit a biennial report to the legislature setting forth the grants made pursuant to RCW 90.48.290 as now or hereafter amended, agencies to which granted, progress towards adoption of comprehensive plans for water pollution control and abatement for the drainage basins of the state, and the extent to which approved projects have conformed to said plans.

NEW SECTION. Sec. 3. The department of water resources may establish minimum water flows or levels for streams, lakes or other public waters for the purposes of protecting fish, game, birds, or other wildlife resources, or recreational or aesthetic values of said public waters whenever it appears to be in the public interest to establish the same. In addition, the department of water resources shall, when requested by the department of fisheries or the game commission to protect fish, game or other wildlife resources under the jurisdiction of the requesting state agency, or by the water pollution control commission to preserve water quality, establish such minimum flows or levels as are required to protect the resource or preserve the water quality described in the request. Any request submitted by the department of fisheries, game commission or water pollution control commission shall include a statement setting forth the need for establishing a minimum flow or level. This section shall not apply to waters artificially stored in reservoirs, provided that in the granting of storage permits by the department of water resources in the future full recognition shall be given to downstream minimum flows, if any there may be, which have theretofore been established hereunder.

NEW SECTION. Sec. 4. Flows or levels authorized for establishment under section 3 hereof, or subsequent modification thereof by the department shall be provided for through the adoption of regulations. Prior to the establishment or modification of a water flow or level for any stream or lake or other public water, the department shall hold a public hearing in the county in which the stream, lake or other public water is located. If the same is located in more than one county the department shall determine the location or locations therein and number of hearings to be conducted. Notice of hearings shall be given by publication in a newspaper of general circulation in the county or counties in which the stream, lake or other public waters is located, once a week for three consecutive weeks prior to the hearing. Said notice shall include the

following:

(1) The name of the stream, lake or other water source under consideration.

(2) The proposed levels or flows to be established, if the department has made such a determination prior to the hearing.

(3) The place and time of the hearing.

(4) A statement that any person, including any private citizen or public official may present his views either orally or in writing.

Notice of the hearing shall also be served upon the administrators of the departments of fisheries, health and natural resources, the game commission, the state highway commission and the water pollution control commission.

NEW SECTION. Sec. 5. The establishment of levels and flows pursuant to section 3 of this 1969 amendatory act shall in no way affect existing water and storage rights and the use thereof, including but not limited to rights relating to the operation of any hydroelectric or water storage reservoir or related facility. No right to divert or store public waters shall be granted by the department of water resources which shall conflict with regulations adopted pursuant to sections 3 and 4 of this 1969 amendatory act establishing flows or levels. All regulations establishing flows or levels shall be filed in a "Minimum Water level and Flow Register" of the department of water resources.

NEW SECTION. Sec. 6. It shall be the policy of the state, and the department of water resources shall be so guided in the implementation of sections 3 and 4 of this 1969 amendatory act, to retain sufficient minimum flows or levels in streams, lakes or other public waters to provide adequate waters in such water sources to satisfy stockwatering requirements for stock on riparian grazing lands which drink directly therefrom where such retention shall not result in an unconscionable waste of public waters. The policy hereof shall not apply to stockwatering relating to feed lots and

other activities which are not related to normal stockgrazing land uses.

NEW SECTION. Sec. 7. There is added to chapter 242, Laws of 1967 and to chapter 43.27A RCW a new section to read as follows:

Notwithstanding and in addition to any other powers granted to the department of water resources, whenever it appears to the director of the department of water resources, or to an assistant authorized by the director to issue regulatory orders under this section, that a person is violating or is about to violate any of the provisions of the following:

- (1) Chapter 90.03 RCW; or
- (2) Chapter 90.44 RCW; or
- (3) Chapter 86.16 RCW; or
- (4) Chapter 43.37 RCW; or
- (5) Chapter 43.27A RCW; or

(6) Any other chapter or statute the director of the department of water resources is charged with administering; or

(7) A rule or regulation adopted, or a directive or order issued by the department of water resources relating to subsections (1) through (6) of this section;

the director of the department of water resources, or an authorized assistant, may cause a written regulatory order to be served upon said person either personally, or by registered or certified mail delivered to addressee only with return receipt requested and acknowledged by him. The order shall specify the provision of the statute, rule, regulation, directive or order alleged to be or about to be violated, and the facts upon which the conclusion of violating or potential violation is based, and shall order the act constituting the violation or the potential violation to cease and desist or, in appropriate cases, shall order necessary corrective action to be taken with regard to such acts within a specific and reasonable time. The regulation of a headgate or controlling works as provided in RCW 90.03.070, by a watermaster, stream patrolman, or other person so

authorized by the director of the department of water resources, shall constitute a regulatory order within the meaning of this section. A regulatory order issued hereunder shall become effective immediately upon receipt by the person to whom the order is directed, except for regulations under RCW 90.03.070 which shall become effective when a written notice is attached as provided therein, and shall become final unless review thereof is requested as provided in section 8 of this 1969 amendatory act. This section is supplementary to and shall not lessen any of the regulatory and enforcement powers of the department of water resources.

NEW SECTION. Sec. 8. There is added to chapter 242, Laws of 1967 and to chapter 43.27A a new section to read as follows:

Any person feeling aggrieved by a regulatory order issued pursuant to section 7 of this 1969 amendatory act shall be entitled to review thereof upon request as follows:

(1) Review of the following categories of orders enumerated in subsections (a), (b), (c) and (d) of this subsection (1) shall be available in superior court pursuant and subject to the provisions of RCW 90.03.080 and shall include:

(a) An order which relates to the right to divert, withdraw or otherwise make beneficial use of waters of a water source which has been adjudicated pursuant to RCW 90.03.110 through 90.03.240 or RCW 90.44.220 and 90.44.230; or

(b) An order which relates to the performance of an activity, or the construction or operation of a facility or improvement by a person without a permit, certificate, license or other authorization or approval of the department of water resources when the same is required to be obtained from the department by the person by statute, including but not limited to RCW 90.03.250, 90.03.350, 90.03.370, 90.03.380, 90.44.050, 86.16.080, or 43.37.080, prior to said performance, construction or operation; or

(c) An order which relates to the violation of a term or condition of a permit or certificate, license or other authorization or

approval issued by the department of water resources; or

(d) An order which relates to a water use condition constituting an emergency which threatens the public safety or welfare;

(2) Review of all regulatory orders issued pursuant to section 7 of this 1969 amendatory act, other than those described in section 8 (1) of this act, shall be available through administrative hearings conducted by the department of water resources. A hearing shall be granted by the director of the department of water resources if the requester submits a written request to the director by certified or registered mail for a hearing and the same is received by, or mailed to the director within thirty days from the date of receipt of the order. No such request shall be entertained unless it contains the following:

(a) The requester's name and address;

(b) The date of the order for which the request for review is taken;

(c) A statement of the substance of the order complained of;

(d) A clear, separate and concise statement of each and every error which the requester alleges to have been committed by the department;

(e) A clear and concise statement of facts upon which the requester relies to sustain his statements of error; and

(f) A statement setting forth the relief sought.

All hearings shall be before the director or a hearing officer appointed by the director. Any party to a hearing held hereunder who feels aggrieved by a final order issued by the director of the department of water resources after a hearing may obtain review thereof in a superior court. All hearings and judicial review authorized hereunder shall be subject to the provisions of chapter 34.04 RCW pertaining to contested cases.

In the event a regulatory or final order issued pursuant to section 7 or 8 of this 1969 amendatory act is not complied with, the attorney general, upon request of the department of water resources,



shall bring an action in the superior court of the county where the violation occurred or potential violation is about to occur to obtain such judicial relief as necessary, including injunctive relief, to insure that said order is complied with.

NEW SECTION. Sec. 9. Any person, corporation, association or government agency feeling aggrieved by any order, decision or determination of the department of water resources, other than a regulatory order issued pursuant to section 7 or 8 of this 1969 amendatory act, who is not otherwise expressly entitled to a hearing before the department of water resources prior or subsequent to the issuance of any such order, decision or determination shall be entitled to a hearing under the provisions of this section upon request. No request shall be entertained unless it contains the same information and statements as required in a written request for a hearing as set forth in section 8 (2) of this act, and is delivered to the department's office in Olympia either personally or by registered or certified mail, within thirty days following the rendition of the order, decision or determination by said department.

Any party to this proceeding shall be entitled to have a final order of the department reviewed by the superior court. The proceedings authorized hereunder shall be construed as "contested cases" within the meaning of chapter 34.04 RCW and said RCW chapter shall apply to all phases of the hearing and the judicial review granted in this section.

NEW SECTION. Sec. 10. There is added to chapter 242, Laws of 1967 and chapter 43.27A RCW a new section to read as follows:

The director of the department of water resources may, by appropriate regulation, delegate any of the powers and duties vested in him as director of the department of water resources, other than the adoption, amendment or rescission of rules or regulations, to any of the three assistant directors heading the divisions of the department as provided for in RCW 43.27A.070.

NEW SECTION. Sec. 11. There is added to chapter 242, Laws of

1967 and to chapter 43.27A a new section to read as follows:

Whenever the word "person" is used in sections 7 through 9 of this 1969 amendatory act, it shall be construed to include any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual or any other entity whatsoever.

NEW SECTION. Sec. 12. There is added to chapter 233, Laws of 1967 and to chapter 90.14 RCW a new section to be codified as RCW 90.14.031 to read as follows:

Unless a different meaning is plainly required by the context, the following words and phrases as used in sections 12 through 21 of this 1969 amendatory act shall have the following meanings:

(1) "Person" shall mean an individual, partnership, association, public or private corporation, city or other municipality, county, or a state agency, and the United States of America when claiming water rights established under the laws of the state of Washington.

(2) "Beneficial use" shall include, but not be limited to, use for domestic water, irrigation, fish, shellfish, game and other aquatic life, municipal, recreation, industrial water, generation of electric power, and navigation.

NEW SECTION. Sec. 13. There is added to chapter 233, Laws of 1967 and to chapter 90.14 RCW a new section to be codified as RCW 90.14.041 to read as follows:

All persons using or claiming the right to withdraw or divert and make beneficial use of public surface or ground waters of the state, except as hereinafter provided in this section, shall file with the department of water resources not later than June 30, 1974, a statement of claim for each water right asserted on a form provided by the department. This section shall not apply to any water rights which are based on the authority of a permit or certificate issued by the department of water resources or one of its predecessors.

NEW SECTION. Sec. 14. There is added to chapter 233, Laws of

1967 and to chapter 90.14 RCW a new section to be codified as RCW 90.14.051 to read as follows:

The statement of claim for each right shall include the following:

- (1) The name and mailing address of the claimant.
- (2) The name of the watercourse or water source from which the right to divert or make use of water is claimed, if available.
- (3) The quantities of water and times of use claimed.
- (4) The legal description, with reasonable certainty, of the point or points of diversion and places of use of waters.
- (5) The purpose of use, including, if for irrigation, the number of acres irrigated.
- (6) The approximate dates of first putting water to beneficial use for the various amounts and times claimed in subsection (3).
- (7) The legal doctrine or doctrines upon which the right claimed is based, including if statutory, the specific statute.
- (8) The sworn statement that the claim set forth is true and correct to the best of claimant's knowledge and belief.

NEW SECTION. Sec. 15. There is added to chapter 233, Laws of 1967 and to chapter 90.14 RCW a new section to be codified as RCW 90.14.061 to read as follows:

Filing of a statement of a claim shall take place and be completed upon receipt by the department of water resources, at its office in Olympia, of an original statement signed by the claimant or his authorized agent, and two copies thereof. Any person required to file hereunder may file through a designated representative. A company, district, public or municipal corporation, or the United States when furnishing to persons water pertaining to water rights required to be filed under section 13 of this 1969 amendatory act, shall have the right to file one claim on behalf of said persons on a form prepared by the department for the total benefits of each person served; provided that a separate claim shall be filed by such company, district, public or private corporation, or the United States for each

operating unit of the filing entity providing such water and for each water source. Within thirty days after receipt of a statement of claim the department shall acknowledge the same by a notation on one copy indicating receipt thereof and the date of receipt, together with the wording of the first sentence of section 17 of this 1969 amendatory act, and shall return said copy by certified or registered mail to the claimant at the address set forth in the statement of claim. No statement of claim shall be accepted for filing by the department of water resources unless accompanied by a two dollar filing fee.

NEW SECTION. Sec. 16. There is added to chapter 233, Laws of 1967 and to chapter 90.14 RCW a new section to be codified as RCW 90-.14.071 to read as follows:

Any person claiming the right to divert or withdraw waters of the state as set forth in section 13 of this 1969 amendatory act, who fails to file a statement of claim as provided in sections 13, 14 and 15 of this 1969 amendatory act, shall be conclusively deemed to have waived and relinquished any right, title, or interest in said right.

NEW SECTION. Sec. 17. There is added to chapter 233, Laws of 1967 and to chapter 90.14 RCW a new section to be codified as RCW 90.14.081 to read as follows:

The filing of a statement of claim does not constitute an adjudication of any claim to the right to use of waters as between the water use claimant and the state, or as between one or more water use claimants and another or others. A statement of claim filed pursuant to section 15 of this 1969 amendatory act shall be admissible in a general adjudication of water rights as prima facie evidence of the times of use and the quantity of water the claimant was withdrawing or diverting as of the year of the filing, if, but only if, the quantities of water in use and the time of use when a controversy is mooted are substantially in accord with the times of use and quantity of water claimed in the statement of claim. A statement of claim shall not otherwise be evidence of the priority of

the claimed water right.

NEW SECTION. Sec. 18. There is added to chapter 233, Laws of 1967 and to chapter 90.14 RCW a new section to be codified as RCW 90.14.091 to read as follows:

For the purpose of sections 12 through 22 of this 1969 amendatory act the following words and phrases shall have the following meanings:

(1) "Statement of taxes due" means the statement required under RCW 84.56.050.

(2) "Notice in writing" means a notice substantially in the following form:

#### WATER RIGHTS NOTICE

Every person, including but not limited to an individual, partnership, association, public or private corporation, city or other municipality, county, state agency and the state of Washington, and the United States of America, when claiming water rights established under the laws of the state of Washington, are hereby notified that all water rights or claimed water rights relating to the withdrawal or diversion of public surface or ground waters of the state, except those water rights based upon authority of a permit or certificate issued by the Department of Water Resources or one of its predecessors, must be registered with the Department of Water Resources, Olympia, Washington not later than June 30, 1974. FAILURE TO REGISTER AS REQUIRED BY LAW WILL RESULT IN A WAIVER AND RELINQUISHMENT OF SAID WATER RIGHT OR CLAIMED WATER RIGHT. For further information contact the Department of Water Resources, Olympia, Washington, for a copy of the act and an explanation thereof.

NEW SECTION. Sec. 19. There is added to chapter 233, Laws of 1967 and to chapter 90.14 RCW a new section to be codified as RCW 90.14.101 to read as follows:

To insure that all persons referred to in section 12 and 13 of this 1969 amendatory act are notified of the registration provisions of this 1969 amendatory act, the department of water resources is

directed to give notice of the registration provisions of this 1969 amendatory act as follows:

(1) It shall cause a notice in writing to be placed in a prominent and conspicuous place in all newspapers of the state having a circulation of more than fifty thousand copies for each week day, and in at least one newspaper published in each county of the state, at least once each year for five consecutive years.

(2) It shall cause a notice substantially the same as a notice in writing to be broadcast by each commercial television station operating in the United States and viewed in the state, and by at least one commercial radio station operating from each county of the state having such a station regularly at six month intervals for five consecutive years.

(3) It shall cause a notice in writing to be placed in a prominent and conspicuous location in each county court house in the state.

(4) The county treasurer of each county shall enclose with each mailing of one or more statements of taxes due issued in 1972 a copy of a notice in writing and a declaration that it shall be the duty of the recipient of the statement of taxes due to forward the notice to the beneficial owner of the property. A sufficient number of copies of the notice and declaration shall be supplied to each county treasurer by the director of the department of water resources before the fifteenth day of January, 1972. In the implementation of this subsection the department of water resources shall provide reimbursement to the county treasurer for the reasonable additional costs, if any there may be, incurred by said treasurer arising from the inclusion of a notice in writing as required herein.

(5) It shall provide copies of the notice in writing to the press services with offices located in Thurston county during January of the years 1970, 1971, 1972, 1973 and 1974.

The director of the department may also in his discretion give notice in any other manner which will carry out the purposes of this

section. Where notice in writing is given pursuant to subsections (1) and (3) of this section, sections 13, 14 and 16 of this 1969 amendatory act shall be set forth and quoted in full.

NEW SECTION. Sec. 20. There is added to chapter 233, Laws of 1967 and to chapter 90.14 RCW a new section to be codified as RCW 90.14.111 to read as follows:

The department of water resources is directed to establish a registry entitled the "Water Rights Claims Registry." All claims set forth pursuant to sections 13, 14 and 15 of this 1969 amendatory act shall be filed in the registry alphabetically and consecutively by control number, and by such other manner as deemed appropriate by the department.

NEW SECTION. Sec. 21. There is added to chapter 233, Laws of 1967 and to chapter 90.14 a new section to be codified as RCW 90.14-.121 to read as follows:

The filing of a statement of claim pursuant to section 15 of this 1969 amendatory act which knowingly provides for an over statement of a right either in quantities of water or times of use claimed shall constitute a misdemeanor punishable by a fine of not more than two hundred fifty dollars or by imprisonment for not more than ninety days, or both.

NEW SECTION. Sec. 22. Sections 3 through 6 of this 1969 amendatory act shall constitute a new chapter in Title 90 RCW.

NEW SECTION. Sec. 23. Section 1, chapter 81, Laws of 1967 and RCW 43.21.145; section 3, chapter 233, Laws of 1967 and RCW 90-.14.030; section 4, chapter 233, Laws of 1967 and RCW 90.14.040; section 5, chapter 233, Laws of 1967 and RCW 90.14.050; section 6, chapter 233, Laws of 1967 and RCW 90.14.060; section 7, chapter 233, Laws of 1967 and RCW 90.14.070; section 8, chapter 233, Laws of 1967 and RCW 90.14.080; section 9, chapter 233, Laws of 1967 and RCW 90-.14.090; section 10, chapter 233, Laws of 1967 and RCW 90.14.100; section 11, chapter 233, Laws of 1967 and RCW 90.14.110; and section 12, chapter 233, Laws of 1967 and RCW 90.14.120 are each repealed.

NEW SECTION. Sec. 24. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected.

Passed the House May 9, 1969

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