

## CHAPTER 1

[Reengrossed Second Substitute Senate Bill No. 2620]

EMERGENCY WATER WITHDRAWAL—AUTHORITY—FISCAL SUPPORT—  
PENALTIES

AN ACT Relating to water; amending section 3, chapter 295, Laws of 1975 1st ex. sess. as amended by section 1, chapter 36, Laws of 1975-'76 2nd ex. sess. and RCW 43.83B.210; creating new sections; authorizing the issuance of general obligation bonds and bond anticipation notes; making appropriations; prescribing penalties; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Section 1. The legislature finds that it is necessary to provide the department of ecology with emergency powers to authorize withdrawals of public surface and ground waters, including dead storage within reservoirs, on a temporary basis, and construction of facilities in relation thereto, in order to alleviate emergency water supply conditions arising from the drought forecast for the state of Washington during the summer and fall of 1977.

In order to provide needed capital for the planning, acquisition, construction, and improvement of water supply facilities to withdraw and distribute water to alleviate emergency water supply conditions arising from the drought forecast for the state of Washington during the summer and fall of 1977, the state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of eighteen million dollars, or so much thereof as may be required to finance such projects, and all costs incidental thereto. No bonds authorized by this section and sections 13 through 16 of this 1977 amendatory act shall be offered for sale without prior legislative appropriation, and these bonds shall be paid and discharged within thirty years of the date of issuance in accordance with Article VIII, section 1 of the state Constitution.

NEW SECTION. Sec. 2. Domestic and irrigation uses of public surface and ground waters shall be given priority in determining "beneficial uses" for the purposes of section 3 of this 1977 amendatory act.

NEW SECTION. Sec. 3. In addition to the powers previously vested in the department of ecology to permit the withdrawal of public surface and ground waters by chapters 90.03 and 90.44 RCW, the department of ecology is authorized to permit withdrawals of public surface and ground waters, including dead storage within reservoirs, on a temporary basis, for any period ending not later than September 30, 1977, for any beneficial use. The department may issue such emergency permits if, after investigation and after providing appropriate federal, state, and local governmental bodies an opportunity to comment, the following are found:

(1) The waters proposed for withdrawal are to be used in relation to beneficial use involving a previously established activity or purpose; and

(2) The previously established activity or purpose was furnished water through rights applicable to the use of a public water body which are not exercisable due to the lack of water arising from natural drought conditions; and

(3) The proposed withdrawal will not reduce flows or levels below essential minimums necessary (a) to assure the maintenance of fisheries requirements, and

(b) to protect federal and state interests including, among others, power generation, navigation, and existing water rights.

All permits issued hereunder shall contain provisions which allow for termination of authorized withdrawals, in whole or in part, whenever withdrawals will conflict with flows and levels as provided in subsection (3) of this section.

NEW SECTION. Sec. 4. In addition to any other powers previously vested in the department of social and health services, the department is authorized to permit withdrawal of public surface and ground waters for municipal and industrial water supply and distribution facilities to alleviate emergency water supply conditions arising from the drought forecast for the state during the summer and fall of 1977. Such authorization shall be on a temporary basis for any period ending not later than September 30, 1977. The department may issue such emergency permits if, after investigation and after providing appropriate federal, state, and local governmental bodies an opportunity to comment, the following are found:

(1) The waters proposed for withdrawal are to be used in relation to beneficial use involving a previously established activity or purpose; and

(2) The previously established activity or purpose was furnished water through rights applicable to the use of a public water body which are not exercisable due to the lack of water arising from natural drought conditions; and

(3) The proposed withdrawal will not reduce flows or levels below essential minimums necessary (a) to assure the maintenance of fisheries requirements, and (b) to protect federal and state interests including, among others, power generation, navigation, and existing water rights.

All permits issued hereunder shall contain provisions which allow for termination of authorized withdrawals, in whole or in part, whenever withdrawals will conflict with flows and levels as provided in subsection (3) of this section.

NEW SECTION. Sec. 5. (1) As to projects and water withdrawal permits issued or authorized or both under sections 3 and 4 of this 1977 amendatory act, the requirements of chapter 43.21C RCW and all local zoning ordinances, plans, and local building and construction permit ordinances are waived and inapplicable. Notwithstanding any other provisions of law, water projects and related withdrawal permits, authorized or issued pursuant to sections 3 or 4 of this 1977 amendatory act shall not be subject to any public notice requirements. Permits issued under sections 3 and 4 of this 1977 amendatory act shall be in lieu of all environmental protection and natural resource regulation permits, certificates, and other approvals and authorization documents required under state statutes including, but not limited to, RCW 90.58.140, 75.20.100, and 86.16.080, as well as all other similar permits required under local ordinances. All state departments or other agencies having jurisdiction over state or other public lands which are required to be used in carrying out projects related to water withdrawal permits, issued pursuant to sections 3 and 4 of this 1977 amendatory act, shall provide short term easements or other appropriate property interests upon the payment of the fair market value: PROVIDED, That this mandate shall not apply to any lands of the state which are reserved for a special purpose or use which cannot properly be carried out if such a property interest were to be conveyed.

(2) Upon request of the department of ecology or the department of social and health services, the department of general administration may waive any public

bidding requirements otherwise provided by law, for any project authorized by sections 3 or 4 of this 1977 amendatory act and financed with funds appropriated in this 1977 amendatory act if the department of general administration determines that (a) an emergency condition exists, and (b) if the request for a waiver is not approved the public interest will be significantly affected in a detrimental manner. The department of general administration shall rule upon requests for waiver submitted to it within five working days. If the department fails to rule within said five-day period the request shall be deemed approved and a waiver deemed to be granted. The department of general administration, after obtaining the views of the department of ecology and the department of social and health services, shall adopt rules to implement this section. Notwithstanding any other provision of this 1977 amendatory act, this subsection shall terminate on September 30, 1977.

NEW SECTION. Sec. 6. (1) Nothing in sections 1 through 10 of this 1977 amendatory act shall authorize any interference whatsoever with existing water rights.

(2) Nothing in sections 1 through 10 of this 1977 amendatory act shall authorize the establishment of rights to withdrawal of waters of a permanent nature or of rights with any priority.

(3) Nothing in sections 1 through 10 of this 1977 amendatory act shall authorize the establishment of a water right under RCW 90.03.250 or 90.44.060.

(4) Nothing in sections 1 through 10 of this 1977 amendatory act shall preclude any person from filing an application pursuant to RCW 90.03.250 or 90.44.060: PROVIDED, HOWEVER, That any such application for withdrawal rights as to withdrawals made under authority of sections 1 through 10 of this 1977 amendatory act shall be subject to all applicable laws and rules as though sections 1 through 10 of this 1977 amendatory act had not existed.

NEW SECTION. Sec. 7. (1) The department of ecology shall adopt such rules as are necessary and appropriate to carry out the powers provided in this 1977 amendatory act.

(2) The department of social and health services shall adopt such rules as are necessary and appropriate to carry out the powers provided in this 1977 amendatory act.

NEW SECTION. Sec. 8. The power is granted to the department of ecology to levy civil penalties of up to one hundred dollars per day for violation of any of the provisions of this chapter and chapters 90.03, 90.22, and 90.44 RCW, and rules, permits, and similar documents and regulatory orders of the department of ecology adopted or issued pursuant to such chapters. The procedures of RCW 90.48.144 shall be applicable to all phases of the levying of a penalty as well as review and appeal of the same.

NEW SECTION. Sec. 9. The department of ecology is authorized to employ necessary temporary personnel until September 30, 1977, in project-related fields, including, but not limited to, engineering, hydrology, geology, and natural or water resources, not to exceed five full time equivalent staff years to carry out the provisions of sections 1 through 10 this 1977 amendatory act. Such temporary personnel shall be funded only through the biennial appropriations to the department, and not by funds provided by this 1977 amendatory act.

**NEW SECTION.** Sec. 10. (1) The department of ecology shall, by rule, establish rates of charges for all waters delivered from such facilities as constructed by the department with funds provided in sections 18 (2) or (3) of this 1977 amendatory act. Where the department provides water to public or municipal corporations or other governmental bodies having authority to distribute water, the payment for the water may be made pursuant to contract over a period not exceeding twenty-five years from the date of delivery. In all other cases, the department shall obtain payment for waters prior to its delivery to a purchaser. All payments received shall be deposited into the state emergency water projects bond redemption fund of 1977.

(2) Public bodies, eligible to obtain funds through grants or loans or combinations thereof under the provisions of sections 1 through 10 of this 1977 amendatory act and RCW 43.83B.210 as now or hereafter amended, are authorized to enter into contracts with the department of ecology for the purpose of repaying loans authorized by sections 17 and 18 of this 1977 amendatory act and for the purpose of purchasing water under this section.

(3) The department of ecology is authorized to enter into appropriate contracts to ensure effective delivery of water and the operation and maintenance of facilities constructed pursuant to this 1977 amendatory act.

Sec. 11. Section 3, chapter 295, Laws of 1975 1st ex. sess. as amended by section 1, chapter 36, Laws of 1975-'76 2nd ex. sess. and RCW 43.83B.210 are each amended to read as follows:

The department of ecology is authorized to make loans or grants or combinations thereof to eligible public bodies as defined in RCW 43.83B.050 for rehabilitation or betterment of agricultural water supply facilities, and/or construction of agricultural water supply facilities required to develop new irrigated lands or, when required because of emergency drought conditions, to provide water to previously irrigated lands. The department of ecology may make such loans or grants or combinations thereof as matching funds in any case where federal, local, or other funds have been made available on a matching basis. A loan or combination loan and grant shall not exceed fifty percent of the approved eligible project costs for any single proposed project: PROVIDED, That for projects authorized by section 18 of this 1977 amendatory act the department of ecology may make a loan or combination loan and grant up to one hundred percent of the total single project cost and the grant portion for any single project shall not exceed fifteen percent of the total single project cost. Any grant or grant portion of a combination loan and grant for any single proposed project shall not exceed fifteen percent of the eligible project costs: PROVIDED, That the fifteen percent limitation established herein shall not be applicable to project commitments which the director or deputy director of the state department of ecology made to the bureau of reclamation of the United States department of interior for providing state funding at thirty-five percent of project costs during the period between August 1, 1974, and June 30, 1975.

The department of social and health services is authorized to make grants of up to forty percent of the cost of construction of any eligible project necessitated by the 1977 drought conditions. Such grants may be made only to public bodies as defined in RCW 43.83B.050 for municipal and industrial water supply and distribution facilities.

NEW SECTION. Sec. 12. The state finance committee is authorized to prescribe the form of the bonds authorized in section 1 of this 1977 amendatory act, the time of sale of all or any portion or portions of such bonds, and the conditions of sale and issuance thereof.

The bonds shall pledge the full faith and credit of the state of Washington and contain an unconditional promise to pay the principal and interest when due. The committee may provide that the bonds, or any of them, may be called prior to the due date thereof under such terms and conditions as it may determine. The state finance committee may authorize the use of facsimile signatures in the issuance of the bonds.

As used in sections 1, and 12 through 16 of this 1977 amendatory act, the term "water supply facilities for water withdrawal and distribution" shall mean municipal, industrial, and agricultural water supply and distribution systems including, but not limited to, all equipment, utilities, structures, real property, and interest in and improvements on real property necessary for or incidental to the acquisition, construction, installation, improvement, or use of any water supply or distribution system furnishing water for agricultural, municipal or industrial purposes.

NEW SECTION. Sec. 13. At the time the state finance committee determines to issue such bonds authorized in sections 1, and 12 through 16 of this 1977 amendatory act or a portion thereof, it may, pending the issuance thereof, issue in the name of the state, temporary notes in anticipation of the money to be derived from the sale of the bonds, which notes shall be designated as "bond anticipation notes". The proceeds from the sale of bonds and notes authorized by sections 1, and 12 through 16 of this 1977 amendatory act shall be deposited in the state emergency water projects revolving account, hereby created in the general fund in the state treasury, and shall be used exclusively for the purposes specified in sections 1, and 12 through 16 of this 1977 amendatory act and for the payment of expenses incurred in the issuance and sale of such bonds and notes: PROVIDED, That such portion of the proceeds of the sale of such bonds as may be required for the payment of the principal and interest on such anticipation notes as have been issued, shall be deposited in the state emergency water projects bond redemption fund of 1977 in the state treasury created by section 15 of this 1977 amendatory act.

NEW SECTION. Sec. 14. The principal proceeds from the sale of the bonds authorized in sections 1, and 12 through 16 of this 1977 amendatory act shall be administered by the director of the department of ecology.

NEW SECTION. Sec. 15. The state emergency water projects bond redemption fund of 1977, hereby created in the state treasury, shall be used for the purpose of the payment of interest on and retirement of the bonds and notes authorized to be issued by sections 1, and 12 through 16 of this 1977 amendatory act. The state finance committee, on or before June 30th of each year, shall certify to the state treasurer the amount needed in the ensuing twelve months, to meet bond retirement and interest requirements. Not less than thirty days prior to the date on which any such interest or principal and interest payment is due, the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the 1977 emergency water projects bond redemption fund

an amount equal to the amount certified by the state finance committee to be due on such payment date.

The owner and holder of each of the bonds or the trustee for any of the bonds, by mandamus or other appropriate proceeding, may require and compel the transfer and payment of funds as directed herein.

NEW SECTION. Sec. 16. The bonds authorized by sections 1, and 12 through 16 of this 1977 amendatory act shall be a legal investment for all state funds under state control and all funds of municipal corporations.

NEW SECTION. Sec. 17. There is hereby appropriated to the department of social and health services the sum of nine million seven hundred thirty-seven thousand dollars, or so much thereof as may be necessary, for the biennium ending June 30, 1977, from the general fund—state and local improvements revolving account—water supply facilities for the purposes authorized in sections 1 through 10 of this 1977 amendatory act and RCW 43.83B.210 as now or hereafter amended relating to the emergency water conditions arising from the drought forecast for the summer and fall of 1977 affecting municipal and industrial water supply distribution facilities. Prior to the expenditure of funds for projects approved by the department, the department shall file a listing of the approved projects with the senate ways and means committee and the house appropriations committee.

(2) There is hereby appropriated to the department of social and health services the sum of five million three hundred twenty-seven thousand dollars, or so much thereof as may be necessary, for the biennium ending June 30, 1977, from the general fund—state and local improvements revolving account—water supply facilities to be expended for municipal and industrial water supply and distribution facility projects for which applications are in progress on the effective date of this 1977 amendatory act and have arisen from the drought forecast for the summer and fall of 1977. Prior to the expenditure of funds for projects approved by the department, the department shall file a listing of the approved projects with the senate ways and means committee and the house appropriations committee.

The municipal and industrial water supply and distribution facilities receiving funds from the appropriations contained in this section shall comply with the eligible costs criteria, health and design standards, and contract performance requirements of the municipal and industrial funding program under chapter 43.83B RCW. All projects shall be evaluated by applying the said chapter's evaluation and prioritization criteria to insure that only projects related to water shortage problems receive funding. The projects funded shall be limited to those projects providing interties with adjacent utilities, an expanded source of supply, conservation projects which will conserve or maximize efficiency of the existing supply, or a new source of supply. No obligation to provide a grant for a project authorized under this section shall be incurred after June 30, 1977.

NEW SECTION. Sec. 18. (1) There is hereby appropriated to the department of ecology for the biennium ending June 30, 1977, from the state emergency water projects revolving account in the general fund, the sum of seven million dollars, or so much thereof as may be necessary, which shall be expended for the financing of the following agricultural water supply and distribution projects from surface water

sources: Kennewick Irrigation District; Kittitas Reclamation District; Stemilt Irrigation District; Wenatchee Heights Reclamation District; and the Wenatchee Reclamation District.

(2) There is hereby appropriated to the department of ecology for the biennium ending June 30, 1977, from the state emergency water projects revolving account in the general fund, the sum of five million dollars, or so much thereof as may be necessary, which shall be expended for the financing and construction of agricultural water supply and distribution projects from ground water sources primarily in the Moxee-Ahtanum and Park Creek aquifer areas.

(3) There is hereby appropriated to the department of ecology for the biennium ending June 30, 1977, from the state emergency water supply revolving account in the general fund the sum of six million dollars, or so much thereof as may be necessary, which shall be expended for water withdrawal projects relating to ground and surface waters as provided for in subsections (1) and (2) of this section and for the financing and construction of agricultural water supply and distribution projects from ground and surface water sources which may become required by public bodies other than those identified in this section as a result of the drought forecast for the summer and fall of 1977.

The department may expend funds from the appropriations contained in subsections (1), (2), and (3) of this section to make loans or combinations of loans and grants to public bodies as defined in RCW 43.83B.050. The grant portion of a combination loan and grant to a public body for any project shall not exceed fifteen percent of the total amount received by such project under this section.

The department may expend funds from the appropriations contained in subsections (1), (2), and (3) of this section to make loans or combinations of loans and grants to public bodies as defined in RCW 43.83B.050 to satisfy the matching requirements of RCW 43.83B.210 as now or hereafter amended.

Prior to the funding of any agriculture projects not specifically set forth in this section the department must make a formal finding that: An emergency water shortage condition exists; the project proposed for funding will alleviate the water shortage; the public body recipient of any funds has reasonable capability to repay the loan involved; and the water from the project will be used for a beneficial purpose as a substitute for water not available due to drought conditions.

NEW SECTION. Sec. 19. If any provision of this 1977 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.

NEW SECTION. Sec. 20. This 1977 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate March 25, 1977.

Passed the House March 25, 1977.

Approved by the Governor March 25, 1977.

Filed in Office of Secretary of State March 25, 1977.