

---

HOUSE BILL 1348

---

State of Washington

65th Legislature

2017 Regular Session

By Representatives Taylor, Shea, Buys, and Short

1 AN ACT Relating to the priority in the state water code assigned  
2 to various beneficial uses; amending RCW 90.03.345, 90.22.030, and  
3 90.54.020; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that a foundational  
6 principle of Washington water law, enshrined in Article XXI of the  
7 state Constitution, establishes that the use of state waters for  
8 irrigation, mining, and manufacturing purposes are deemed to be  
9 public uses of those waters. In spite of the bedrock support in the  
10 state Constitution for these beneficial public uses of state waters,  
11 subsequent statutory and case law has established a schema of water  
12 use prioritization that departs from the state's constitutional  
13 intent, and instead inequitably prioritizes instream flow rights  
14 above the constitutionally protected beneficial public uses of these  
15 waters. Therefore, it is the intent of the legislature to rectify the  
16 divergence of state law from its constitutional underpinnings, and  
17 instead establish a prioritization in the state water code that  
18 assigns instream flow rights as junior to water rights that are  
19 applied to beneficial uses of potable water supply, water for  
20 agriculture and irrigation, and water for commercial and industrial  
21 purposes.

1       **Sec. 2.** RCW 90.03.345 and 1979 ex.s. c 216 s 7 are each amended  
2 to read as follows:

3       The establishment of reservations of water for agriculture,  
4 hydroelectric energy, municipal, industrial, and other beneficial  
5 uses under RCW 90.54.050(1) or minimum flows or levels under RCW  
6 90.22.010 or 90.54.040 shall constitute appropriations within the  
7 meaning of this chapter with priority dates as of the effective dates  
8 of their establishment. However, regardless of the priority date  
9 established in this section, base or minimum flows or levels under  
10 chapter 90.22 or 90.54 RCW have an inferior priority relative to  
11 water rights applied to beneficial use for irrigation, commercial,  
12 industrial, or potable water purposes. Whenever an application for a  
13 permit to make beneficial use of public waters embodied in a  
14 reservation, established after September 1, 1979, is filed with the  
15 department of ecology after the effective date of such reservation,  
16 the priority date for a permit issued pursuant to an approval by the  
17 department of ecology of the application shall be the effective date  
18 of the reservation.

19       **Sec. 3.** RCW 90.22.030 and 1988 c 127 s 81 are each amended to  
20 read as follows:

21       The establishment of levels and flows pursuant to RCW 90.22.010  
22 shall in no way affect existing water and storage rights and the use  
23 thereof, including but not limited to rights relating to the  
24 operation of any hydroelectric or water storage reservoir or related  
25 facility. No right to divert or store public waters shall be granted  
26 by the department of ecology which shall conflict with regulations  
27 adopted pursuant to RCW 90.22.010 and 90.22.020 establishing flows or  
28 levels. Regulations adopted pursuant to RCW 90.22.010 and 90.22.020  
29 have a priority as determined under RCW 90.03.345. All regulations  
30 establishing flows or levels shall be filed in a "Minimum Water Level  
31 and Flow Register" of the department of ecology.

32       **Sec. 4.** RCW 90.54.020 and 2007 c 445 s 8 are each amended to  
33 read as follows:

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

36       (1) Uses of water for domestic, stock watering, industrial,  
37 commercial, agricultural, irrigation, hydroelectric power production,  
38 mining, fish and wildlife maintenance and enhancement, recreational,

1 and thermal power production purposes, and preservation of  
2 environmental and aesthetic values, and all other uses compatible  
3 with the enjoyment of the public waters of the state, are declared to  
4 be beneficial.

5 (2) Allocation of waters among potential uses and users shall be  
6 based generally on the securing of the maximum net benefits for the  
7 people of the state. Maximum net benefits shall constitute total  
8 benefits less costs including opportunities lost. Consistent with the  
9 principle established in this subsection, the priority of base flows  
10 protected under subsection (3) of this section must be determined as  
11 determined under RCW 90.03.345.

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

14 (a) Perennial rivers and streams of the state shall be retained  
15 with base flows necessary to provide for preservation of wildlife,  
16 fish, scenic, aesthetic and other environmental values, and  
17 navigational values. Lakes and ponds shall be retained substantially  
18 in their natural condition. Withdrawals of water which would conflict  
19 therewith shall be authorized only in those situations where it is  
20 clear that overriding considerations of the public interest will be  
21 served.

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

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

38 (ii) The municipality demonstrates that no violation of receiving  
39 water quality standards or appreciable environmental degradation will  
40 result.

1 (4) The development of multipurpose water storage facilities  
2 shall be a high priority for programs of water allocation, planning,  
3 management, and efficiency. The department, other state agencies, and  
4 local governments(~~(, and planning units formed under section 107 or~~  
5 ~~108 of this act)~~) shall evaluate the potential for the development of  
6 new storage projects and the benefits and effects of storage in  
7 reducing damage to stream banks and property, increasing the use of  
8 land, providing water for municipal, industrial, agricultural, power  
9 generation, and other beneficial uses, and improving streamflow  
10 regimes for fisheries and other instream uses.

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

13 (6) Multiple-purpose impoundment structures are to be preferred  
14 over single-purpose structures. Due regard shall be given to means  
15 and methods for protection of fishery resources in the planning for  
16 and construction of water impoundment structures and other artificial  
17 obstructions.

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

32 (8) Development of water supply systems, whether publicly or  
33 privately owned, which provide water to the public generally in  
34 regional areas within the state shall be encouraged. Development of  
35 water supply systems for multiple domestic use which will not serve  
36 the public generally shall be discouraged where water supplies are  
37 available from water systems serving the public.

38 (9) Full recognition shall be given in the administration of  
39 water allocation and use programs to the natural interrelationships  
40 of surface and groundwaters.

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

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

--- END ---