
HOUSE BILL 2193

State of Washington

56th Legislature

1999 Regular Session

By Representative Koster

Read first time . Referred to Committee on .

1 AN ACT Relating to water banking; adding a new section to chapter
2 90.03 RCW; adding a new section to chapter 90.42 RCW; adding a new
3 section to chapter 90.44 RCW; adding a new section to chapter 90.54
4 RCW; and adding a new chapter to Title 90 RCW.

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

6 NEW SECTION. **Sec. 1.** PURPOSE. The purpose of this chapter is to
7 enable an optional water allocation method within qualified water
8 resource inventory areas, by allowing local water management districts
9 to restructure water holdings into new packages more suitable to
10 current and future water users, in a manner that will result in more
11 efficient use of water resources, ensure the maintenance of adequate
12 instream flows for fish, improve protection of existing water rights,
13 help alleviate water shortages, provide a flexible and timely means of
14 water allocation, save capital outlays, reduce development costs,
15 improve the economic well-being of the state's citizenry and
16 communities, maximize involvement by local citizens in water resource
17 management, and provide incentives for water conservation, while
18 improving effectiveness of state oversight of water resources.

1 NEW SECTION. **Sec. 2.** FINDINGS. The legislature finds that:

2 (1) Water banking and marketing has proven to be of merit in
3 addressing water resource issues in other states;

4 (2) Water banking and limited water marketing by water resource
5 management districts can provide a means of water allocation that will
6 result in more efficient use of water resources, ensure the maintenance
7 of adequate instream flows for fish, improve protection of existing
8 water rights, help alleviate water shortages, provide a flexible and
9 timely means of water allocation, save capital outlays, reduce
10 development costs, improve the economic well-being of the state's
11 citizenry and communities, maximize involvement of local citizens in
12 water resource management, and provide incentives for water
13 conservation, while improving effectiveness of state oversight of water
14 resources;

15 (3) There is no single best model by which water banking and
16 marketing could or should operate; local banks and markets should be
17 permitted sufficient latitude in their formation and operation to
18 reflect site-specific conditions, within a state-established framework
19 of suitable guidelines, standards, and minimum requirements; and

20 (4) The state should enable and assist in the formation of water
21 resource management districts in water resource inventory areas that
22 meet the terms and conditions set forth in this chapter.

23 NEW SECTION. **Sec. 3.** DEFINITIONS. The definitions in this
24 section apply throughout this chapter unless the context clearly
25 requires otherwise.

26 (1) "Board" means the board of directors of the water resource
27 management districts.

28 (2) "Department" means the department of ecology.

29 (3) "Director" means the director of the department of ecology.

30 (4) "District area" means the surface area encompassed by the
31 boundary of the water resource management district over which the
32 district has water resource management jurisdiction.

33 (5) "Implementing rules" means the rules necessary to give force
34 and effect to the provisions of this chapter that create rights or
35 obligations for any party, including a state agency, or that establish
36 water management policy.

1 (6) "Inchoate water right" means a water right in good standing,
2 some, but not all, of which can be documented as having been put to
3 beneficial use.

4 (7) "Manager" means the person or persons authorized by the board
5 to manage the activities of the district.

6 (8) "Minimum instream flow" means a minimum flow under chapter
7 90.03 or 90.22 RCW or a base flow under chapter 90.54 RCW.

8 (9) "Person" means any individual, firm, association, water users'
9 association, corporation, irrigation district, or municipal
10 corporation.

11 (10) "Public water system" has the meaning provided in RCW
12 70.119A.020.

13 (11) "Margin of error" means the unavoidable total cumulative error
14 in measuring water flows during water resource assessments.

15 (12) "WRIA" means a water resource inventory area established in
16 chapter 173-500 WAC as it existed on January 1, 1997.

17 (13) "WRIA plan" means the product of a planning unit established
18 under the provisions of chapter 90.82 RCW.

19 (14) "Water resource management district" means a water resource
20 management district created by this chapter.

21 (15) "Water bank" means an entity into which water rights may be
22 deposited, and from which water flows may be withdrawn, that is managed
23 by the board.

24 (16) "Water marketing" means voluntary transfers of water into, and
25 authorized transfer of water out of, the water banks under the terms
26 and conditions set forth in this chapter.

27 (17) "Water reserve" means a quantity of stored water that is kept
28 in reserve to meet potential shortfalls in water supply due to
29 contingencies such as prolonged drought, substantial leaks in water
30 systems, nonpermitted water use, and the margin of error associated
31 with data collection during water resource assessments.

32 (18) "Water resource assessment" means the assessment of water
33 supply and use within a WRIA as provided in RCW 90.82.070.

34 (19) "Water right" means a valid certificate or permit issued by
35 the department under chapter 90.03 RCW, or a claim of water right.

36 (20) "Water transaction" means an accepted deposit of water flow
37 into, or an authorized withdrawal of water flow from, a water resource
38 management district water bank, as evidenced by a lawfully executed

1 contract between the parties depositing or withdrawing water and the
2 board.

3 NEW SECTION. **Sec. 4.** WATER RESOURCE MANAGEMENT DISTRICTS. (1)
4 Water resource management districts may be established for the purposes
5 of this chapter.

6 (2) A water resource management district shall be a corporate body,
7 shall be of permanent duration, and shall have a seal.

8 (3) A water resource management district shall be known and
9 designated as water resource management district for WRIA
10 subdivision of the WRIA of the county in which it is
11 located.

12 (4) A water resource management district, with the authorities and
13 responsibilities as set forth in subsection (5) of this section, shall
14 be formed according to the procedure set forth in subsection (6) of
15 this section in WRIAs or multi-WRIA management areas identified in RCW
16 90.82.040 that meet the following terms and conditions:

17 (a) Each management area must be undertaking, or must have
18 completed, water resource assessments under RCW 90.82.070;

19 (b) Each management area must be undertaking to establish, under
20 RCW 90.82.080, or must have established minimum instream flows;

21 (c) Each management area must, where applicable, be undertaking
22 planning under chapter 70.116 RCW, or must have approved coordinated
23 water system plans under chapter 70.116 RCW.

24 (5) A water resource management district shall:

25 (a) Monitor all water flows throughout the district area at a
26 frequency to maintain accurate and timely information about surface
27 water and ground water flow, use, and any and all other relevant water
28 resource parameters necessary to the fulfillment of its
29 responsibilities under this chapter;

30 (b) As provided in this chapter, finance, construct, maintain, and
31 operate facilities to capture, store, and use peak surface water flows,
32 to maintain established minimum instream flows in all streams and
33 rivers within its district area, protect existing water rights,
34 maintain a water reserve, and enable limited water marketing under the
35 terms and conditions set forth in this chapter;

36 (c) Release stored water into the waters within the boundary of the
37 district to maintain established minimum instream flows and protect
38 existing water rights;

1 (d) Establish and manage a water bank under the terms of this
2 chapter;

3 (e) Hold, manage, and allocate, on behalf of the state, water from
4 trust water rights acquired by accepting deposits to water banks as
5 provided in this chapter;

6 (f) Purchase, lease, or accept temporary or permanent donations of
7 water from water right holders for deposit into water banks as provided
8 in this chapter;

9 (g) Lease water to applicants therefor;

10 (h) Incur bonded indebtedness to finance the construction of water
11 capture, storage, and distribution facilities as provided by this
12 chapter;

13 (i) Acquire, purchase, hold, lease, manage, occupy, and sell real
14 and personal property or any interest therein, enter into and perform
15 all necessary contracts, appoint and employ necessary agents and
16 employees and fix their compensation, employ contractors including
17 contracts for professional services, sue and be sued, and do any and
18 all lawful acts required and expedient to carry out the purposes of
19 this chapter.

20 (6) A water resource management district is established as follows:

21 (a) Any holder or holders of water rights located within the
22 boundaries of a potential water resource management district's district
23 area who wish to form a water resource management district shall
24 develop, or cause to be developed, a preliminary district management
25 plan, which shall include a study to determine whether conducting the
26 activities that this chapter permits a water resource management
27 district to conduct are consistent with the intent of this chapter.
28 The plan shall, in a comprehensive, professional, and verifiable
29 manner, using the water resource assessment performed for the WRIA in
30 which the potential district is located, ascertain or propose at least
31 the following:

32 (i) The availability of sufficient water to establish a water bank
33 as provided in section 12 of this act;

34 (ii) The potential for capture, storage, and distribution of peak
35 flows by affordable technology, and cost estimates thereof;

36 (iii) An estimate of the existing water right holders who are
37 potential depositors to a water bank within the district area, either
38 through employment of conservation measures, reuse, reclaimed water, or
39 transfer of unused portions of existing rights;

1 (iv) An assessment of the impact of a water market mechanism, as
2 provided in this chapter, upon the social opportunity costs and
3 benefits and nonmarket public values associated with water resource
4 uses in the proposed district area, such as fish and wildlife habitat,
5 water quality, power generation, and water-based recreation;

6 (v) An assessment of a mitigation plan for any identified adverse
7 impacts;

8 (vi) An outline of the proposed plan of operation of the water bank
9 and water market as provided in this chapter, including, but not
10 limited to:

11 (A) Its district boundary;

12 (B) The number and term of office of the members of its board;

13 (C) Its proposed pricing mechanism for both water deposits and
14 water withdrawals;

15 (D) Sources of funds;

16 (E) Identification of the type, capacity, and cost of construction,
17 maintenance, and operation of any storage and distribution projects
18 proposed in the plan;

19 (F) Sources of ground and surface water to be stored, deposited,
20 and withdrawn;

21 (G) Any limitations of types of rights, source locations, class of
22 owner, or type of use that might be imposed upon either deposits
23 accepted or withdrawals permitted by the water bank;

24 (H) Procedures for determining the bankable quantity of water
25 provided by depositors; and

26 (I) The mechanism of posting and processing offers to deposit and
27 requests to withdraw water from the water resource management
28 district's water bank; and

29 (vii) An estimate of the potential for improving water resource
30 management by water banking and marketing within the proposed district
31 area.

32 (b) If the study required by subsection (5) of this section clearly
33 supports a conclusion that formation of a water resource management
34 district would most likely improve management of the area's water
35 resources consistent with the intent of this chapter, supporters of
36 forming a water resource management district may circulate, or cause
37 to be circulated, among the other water rights holders located within
38 the potential district's area, a petition calling for forming the
39 district. A petition receiving valid signatures of at least twenty

1 percent of the water rights holders located within the prospective
2 district's area may be submitted to the department. The petition must
3 contain a true copy of the results of the study undertaken as part of
4 the preliminary plan required by subsection (5) of this section, and a
5 true copy of draft articles of incorporation and bylaws of the
6 prospective water resource management district. The petition must
7 state that establishment of the district will be conducive to the
8 public health, convenience, and welfare and will benefit the property
9 within the district. The petition must state the proposed name of the
10 district, according to the requirements of subsection (3) of this
11 section. The petition must be accompanied by a bond of five thousand
12 dollars to defray costs incurred by the department in considering the
13 creation of the water resource management district. There is no limit
14 to the time available to those circulating a petition; however, all
15 signatories to the petition must be holders of valid water rights at
16 the time the petition is submitted to the department.

17 (c) The department shall complete a review of the preliminary plan
18 within ninety days of receiving a petition to form a district. If the
19 department concurs with the plan's conclusion, the department shall
20 arrange a meeting between its representatives, representatives of the
21 petitioners, of local tribes with jurisdiction, of affected county
22 governments, and of cities located wholly or partially inside the
23 proposed district area, to draft a memorandum of agreement that
24 establishes the specific water resource management objectives of the
25 district and the general terms and conditions of the operation of the
26 water resource management district, based upon and incorporating the
27 elements of the preliminary plan submitted with the petition, suitably
28 modified to address concerns of the affected parties. The terms of the
29 memorandum of agreement may not be inconsistent with the watershed plan
30 applicable to the proposed district area adopted under chapter 90.82
31 RCW. Terms and conditions not directly related to water resource
32 management as provided in this chapter may not be incorporated into the
33 memorandum of agreement.

34 (d) If the petition and the attached feasibility study are verified
35 and accepted by the department, the department shall notify the
36 legislative authority of each county in which the district area is
37 located, informing each of the intent of the petitioners to form a
38 water resource management district, whereupon each legislative
39 authority, at a regular or special meeting, shall cause to be published

1 once a week for at least two weeks in one or more newspapers of general
2 circulation in the proposed district, a notice that the petition has
3 been presented to the department, setting forth the boundaries of the
4 proposed district, summarizing its purpose and plan, and stating the
5 time and place of a public hearing, which shall be held no earlier than
6 forty-five days from the date the notice is postmarked. The notice
7 shall clearly indicate the criteria for eligibility to vote on the
8 formation of the proposed district, and shall indicate how true copies
9 of the preliminary plan, draft articles of incorporation and bylaws,
10 and draft memorandum of agreement may be obtained by those eligible
11 voters. At that hearing, any person, firm, or corporation may appear
12 before the county legislative authority and make a statement in support
13 of or opposition to the establishment of the district.

14 (e) If the department finds, upon review of the testimony provided
15 at the public hearing provided by (d) of this subsection, that the
16 proposed water resource management district would fulfill the intent of
17 this chapter, the department shall authorize the auditor of each county
18 within which the area of the proposed district is located to hold a
19 special election on the first special election date provided for in RCW
20 29.13.020 that falls at least three months after the date of the public
21 hearing as provided in this section.

22 (f) Those persons eligible to vote in the election are those living
23 in and registered to vote in the district area who are also either
24 holders of water rights, owners of wells exempt from permits under RCW
25 90.44.050, or owners of real property located within the proposed
26 district area.

27 (g) The number of votes allotted to each voter shall be as set
28 forth in this chapter.

29 (h) If the water resource management district is created, the
30 county or counties may charge to the board the costs of the auditor or
31 auditors related to the election to authorize the establishment of the
32 district.

33 (i) The election shall also provide for election of the initial
34 members of the board of the prospective water resource management
35 district, under the terms and conditions set forth in this chapter.

36 (j) Formal completion of the establishment of a water resource
37 management district requires:

38 (i) Affirmative votes from the electors within the proposed
39 district area, as follows: Seventy percent of the total of all holders

1 of inchoate water rights, plus fifty percent of all other persons
2 eligible to vote;

3 (ii) Execution of a final version of the memorandum of agreement by
4 all parties thereto; and

5 (iii) Adoption by the department of a rule that applies only to the
6 district.

7 NEW SECTION. **Sec. 5.** CONFLICT OF INTEREST. Any board member who
8 seeks to enter into, or has any interest in any entity that seeks to
9 enter into, any water transaction authorized under this chapter, must
10 disclose the transaction to the other board members prior to any board
11 action on any aspect of the transaction, and must refrain from voting
12 on any aspect of the transaction.

13 NEW SECTION. **Sec. 6.** QUALIFICATIONS OF WATER MANAGER. Persons
14 hired by the board to serve as water manager must have the following
15 qualifications:

16 (1) A bachelor of science degree from an accredited institution in
17 a water-related field, such as hydrology or engineering;

18 (2) A demonstrated familiarity with state water law and hydrology;
19 and

20 (3) Experience in one water resource management field or more, as
21 determined by the board.

22 NEW SECTION. **Sec. 7.** ESTABLISHMENT OF DISTRICT AREA. The
23 boundaries of the district area of a water resource management district
24 are coterminous with the boundaries of subdivisions of WRIAs
25 established by the department. The districts may include within their
26 boundaries one or more counties, cities, and towns, or other political
27 subdivisions. However, no portion or all of any city or town may be
28 included without the consent by resolution of the city or town
29 legislative authority.

30 NEW SECTION. **Sec. 8.** JURISDICTION OVER WATER RESOURCES. (1) The
31 following waters located within the boundaries of a district area fall
32 under the jurisdiction of a water resource management district, to be
33 allocated under the terms and conditions set forth in this chapter, and
34 the terms and conditions of the memorandum of agreement provided for in
35 section 4(6)(c) of this act:

1 (a) All surface and ground water not allocated to existing water
2 rights or instream flows;

3 (b) All waters allocated to the trust water rights established
4 under chapter 90.42 RCW;

5 (c) All water captured and stored in storage facilities constructed
6 by a water resource management district.

7 (2) A water resource management district may transfer water back
8 and forth between water sources under its jurisdiction as needed to
9 fulfill its duties and responsibilities under this chapter.

10 NEW SECTION. **Sec. 9.** LIMITATION OF AUTHORITY AND RESPONSIBILITY.
11 No water resource management district may purvey water to retail
12 customers or in any other way perform the essential functions of a
13 public water system.

14 NEW SECTION. **Sec. 10.** WATER RESOURCE MONITORING. A water
15 resource management district shall perform or cause to be performed
16 continuous monitoring of all water flows throughout the district area
17 in order to maintain accurate and timely information about magnitudes
18 of water flow, water storage, water use, and any and all other relevant
19 water resource parameters necessary to the fulfillment of its
20 responsibilities under this chapter.

21 NEW SECTION. **Sec. 11.** WATER STORAGE AND DISTRIBUTION FACILITIES.
22 (1) If the water resource assessment indicates there is, within the
23 district area, insufficient water available, using current supplies, to
24 meet minimum instream flows, provide water to all existing permitted
25 water users to the full extent of their water rights, establish a water
26 reserve, and provide water for likely future beneficial uses, a water
27 resource management district shall undertake the financing,
28 construction, maintenance, and operation of water storage and
29 distribution facilities as necessary to fulfill its responsibilities
30 under this chapter.

31 (2) A water resource management district may undertake the
32 financing, construction, maintenance, and operation of additional water
33 storage and distribution facilities it deems necessary from time to
34 time to fulfill the terms and conditions of its responsibilities under
35 this chapter.

1 (3) Water storage and distribution facilities as provided under
2 this section may include, but are not limited to, natural and
3 artificial surface reservoirs and natural and artificial ground water
4 aquifer recharge by injection wells, spreading basins, and other
5 recharge efforts.

6 (4) Surface storage facilities meeting the requirements set forth
7 in this section may provide a variety of uses, including fish spawning
8 and rearing habitat and recreational uses, and, thus, may qualify to be
9 classified as multipurpose impoundment structures as described in RCW
10 90.54.020(6).

11 (5) Surface storage facilities meeting the requirements set forth
12 in this section may be considered for fish and wildlife habitat
13 enhancement or mitigation projects under chapter 90.74 RCW.

14 (6) Surface storage facilities with demonstrable wetlands functions
15 meeting the requirements set forth in this section may be used for
16 wetland mitigation banking purposes under chapter 90.84 RCW.

17 (7) At all times, a water resource management district shall
18 undertake water storage and distribution projects in a cost-effective
19 manner, using the best available and affordable technology.

20 (8) The state and all local governments with jurisdiction shall
21 render all means provided under state and local statute and rule to
22 expedite all necessary permits for the construction and operation of
23 such storage and distribution facilities.

24 NEW SECTION. **Sec. 12.** WATER BANKS. (1) A water resource
25 management district shall establish a water bank and shall ensure that
26 the water bank holds all waters under its jurisdiction, as provided in
27 this chapter.

28 (2) The manager shall utilize the water bank to facilitate water
29 marketing as provided by this chapter.

30 (3) The manager shall at all times maintain complete and accurate
31 records of all water bank transactions, including the deposits and
32 withdrawals provided for in this chapter. The manager shall maintain
33 data that includes: The type of each transaction; the duration of each
34 transaction; and the magnitude, both annual and instantaneous flow, of
35 the water flow associated with each transaction. The manager shall
36 make available for public inspection, during ordinary business hours,
37 the records of the water bank.

1 (4) The manager shall ensure the solvency of the water bank at all
2 times. The manager shall maintain in the district water bank deposits
3 of sufficient duration and magnitude to ensure sufficient water to meet
4 all water resource responsibilities of the water resource management
5 district. Failure of the manager to maintain the solvency of the water
6 bank may result in dissolution of the water resource management
7 district by department order, in addition to applicable civil and
8 criminal actions.

9 (5) The manager shall, in computing the amount of water available
10 for allocation from the water bank, take into account the net return
11 flow from each beneficial use within the district area.

12 NEW SECTION. **Sec. 13.** WATER MARKETING. (1) Water resource
13 management districts may market the waters under their jurisdiction,
14 according to the terms and conditions set forth in this section, and
15 the terms and conditions of the memorandum of agreement provided for in
16 this chapter. Water marketing under this section consists of accepting
17 deposits into, and permitting withdrawals from, the water bank, at
18 prices set by a market mechanism established by the district.

19 (2) The board shall establish rules and operate the water market at
20 all times to: Maximize economic efficiency, provide equity to all
21 parties, minimize transaction costs, discourage speculative behavior,
22 factor into water pricing all relevant externalities identified in the
23 water resource management district plan, and allocate risk
24 appropriately. The board shall craft district water market rules that
25 allow for predictable outcomes for all parties participating in water
26 marketing within the district area.

27 (3) The board shall establish rules for operation of the water
28 market, including the mechanism for setting water prices and processing
29 all deposit offers and withdrawal requests, according to the terms and
30 conditions set forth in this chapter and the terms and conditions set
31 forth in the memorandum of agreement. The board shall publish the
32 rules and make them available to all water rights holders and potential
33 water users within the district area.

34 (4) All the terms and conditions of each deposit into and each
35 withdrawal from a water bank managed by a water resource management
36 district must be set forth in a written contract, executed by
37 representatives of, and binding upon, parties thereto.

1 (5) The board may purchase, lease, or accept donations of water
2 from water rights holders, on a temporary or permanent basis, for
3 deposit into a water bank as provided in this chapter.

4 (6) Contracts between depositors of water into a water bank and the
5 water resource management district may contain an option enabling the
6 water resource management district to renew such contracts under
7 mutually agreed upon terms and conditions.

8 (7) Before accepting any water deposit under the terms of this
9 section, the manager shall investigate the legal and physical status of
10 the depositor's water rights, including the demonstrated consumption of
11 the depositor, if any, to ensure that the amount of water offered by
12 the depositor is both legally and physically available.

13 (8) Before accepting any water deposit under the terms of this
14 section, the manager shall determine if the prospective depositor is a
15 member of any type of district under the laws of the state of
16 Washington, including irrigation districts and water districts, and, if
17 the prospective depositor is, the manager shall, before accepting the
18 prospective deposit, require the prospective depositor to obtain
19 approval from the authority of the district.

20 (9) Before accepting any water deposit under the terms of this
21 section, the manager shall determine if the water offered by a
22 prospective depositor is encumbered by any private contract or other
23 arrangement, including one established by common custom or practice,
24 and shall condition the acceptance of any such deposit upon the
25 prospective depositor's removal of all encumbrances.

26 (10) The board may lease water from the water bank to prospective
27 water users who apply for it.

28 (11) Uses of water permitted to those requesting withdrawals may be
29 continuous in nature or may be intermittent or seasonal in nature. If
30 the withdrawal is intermittent or seasonal in nature, the withdrawn
31 water, during the periods of the year in which it is unused, must be
32 returned to the water bank.

33 (12) No lease of water withdrawal may extend further than ninety-
34 nine years without approval of the department.

35 (13) The water resource management district shall offer all lessees
36 of water withdrawals the right of first refusal to lease the same
37 amount of water for specified lengths of time.

38 (14) Applicants for withdrawals from the water bank must put the
39 water applied for to actual beneficial use within one year from the

1 execution of the contract therefor, or the withdrawal contract is null
2 and void, and the water withdrawal is prohibited.

3 (15) The manager shall reject any proposed water withdrawal from
4 the water bank if the proposed withdrawal has potential to impair
5 minimum instream flow levels or potential to reduce the quantity of
6 water available to other existing water right holders.

7 (16) Before issuing approval of any withdrawal, the manager shall
8 assess any potential third-party impacts of any prospective water
9 withdrawal under this section, and may reject or condition the approval
10 of the withdrawal upon finding significant impacts. The finding must
11 be set forth in a document of public record, and must reflect
12 consideration of the terms and conditions of the water resource
13 management district memorandum of agreement as provided in this
14 chapter.

15 (17) A water resource management district may charge appropriate
16 transaction costs to persons who deposit and to persons who withdraw
17 water from the district. The transaction costs may include a prorated
18 share of the cost of recovery of investments in capture, storage, and
19 distribution facilities, district management overhead, and other
20 reasonable costs. Magnitudes of transaction costs must be proportional
21 to the magnitudes of deposits and withdrawals. Although transaction
22 costs may vary between classes of water rights holders, water users,
23 water sources, and other relevant water resource parameters,
24 transaction costs must be generally similar among similar classes.

25 NEW SECTION. **Sec. 14.** MONITORING--INVESTIGATION. (1) The
26 department shall monitor the operation of a water resource management
27 district to determine if the district is fulfilling its obligations
28 under this chapter. The manager and board of each district shall
29 cooperate fully with the department while it conducts any
30 investigation. The department may visit the offices and other
31 facilities of a district to fulfill its obligations under this section,
32 and may do so without warning to the manager or board.

33 (2) After any investigation, if the department concludes that the
34 district is failing to meet its obligations under this chapter, or
35 failing to meet the terms and conditions of the memorandum of agreement
36 as provided in this chapter, and if the department deems the situation
37 correctable by the district, the department shall issue an

1 administrative order under chapter 34.05 RCW, detailing the corrective
2 action to be undertaken by the district.

3 (3) If the corrective action is not undertaken according to the
4 terms and conditions of the administrative order, or if the department
5 deems infraction uncorrectable by the district, the department may, at
6 its discretion, order the dissolution of the district.

7 NEW SECTION. **Sec. 15.** EXEMPTION FROM APPEAL. Water transactions
8 by a water resource management district may not be appealed under RCW
9 90.03.200, however any person may file an appeal with the department on
10 grounds that any consummated or contemplated water transaction under
11 this chapter has had, is having, or could have the effect of impairing
12 established minimum instream flows within, or downstream of, the
13 district area. A true copy of the appeal must be served upon the
14 manager when it is filed with the department. Upon filing of the
15 appeal, the department shall conduct an investigation of the merit of
16 the appeal and shall take such action as it deems appropriate as
17 provided in this chapter. Nothing in this section limits the rights of
18 water rights holders, the state, or other affected parties to file
19 suits in equity in state court against the board.

20 NEW SECTION. **Sec. 16.** RIVER IMPROVEMENT FUND TAX. Upon request
21 by the board, the legislative authority of the county or counties in
22 which the district is located may dedicate a portion of the river
23 improvement fund tax under RCW 86.12.010 for the purposes of funding
24 capture, storage, and distribution facilities as provided in this
25 chapter.

26 NEW SECTION. **Sec. 17.** RIGHTS NOT IMPAIRED. (1) Nothing in this
27 chapter affects or impairs any existing water rights.

28 (2) Nothing in this chapter infringes upon the rate-making
29 prerogatives of any public water purveyor.

30 NEW SECTION. **Sec. 18.** GOVERNING BOARD--TERMS OF OFFICE--
31 ELECTION--APPOINTMENT--VACANCIES--QUALIFICATIONS. (1) The number of
32 members serving on the board shall be as set forth in the memorandum of
33 agreement establishing the water resource management district. The
34 term of office for each member of a board is six years and until his or
35 her successor is elected and qualified. One member of the board is

1 elected at the time of special district general elections in each even-
2 numbered year for a term of six years, beginning as soon as the
3 election returns have been certified for assumption of office by
4 elected officials of cities.

5 (2) The terms of office of the initial members of the board are
6 limited to provide staggered six-year terms. One-third of the members-
7 elect receiving the highest numbers of votes shall serve for a full
8 six-year term; one-third receiving the next highest numbers of votes
9 shall serve for an initial term of four years; and the remaining one-
10 third shall serve an initial term of two years.

11 (3) After the initial election forming the district, regular
12 elections for members of the board shall be special purpose elections,
13 regularly held on the first Tuesday after the first Monday in February
14 in each even-numbered year, at which a member of the board is regularly
15 elected.

16 (4) Any registered voter living in the area of the district, who is
17 also an owner of real property or holder of a water right located
18 within the district, may become a candidate for a position on the board
19 by filing written notice of intent with the county auditor at least
20 sixty days before a special district general election. The county
21 auditor in consultation with the district shall establish the filing
22 period. The names of all candidates for such positions shall be listed
23 alphabetically.

24 (5) Members of the board shall hold office until their successors
25 are elected and qualified, and shall assume office as soon as the
26 election returns have been certified.

27 (6) The requirements for the filing period, the method for filing
28 declarations of candidacy for the board of the district, and the
29 arrangement of candidate names on the ballot for all district elections
30 conducted after the initial election in the district are the same as
31 the requirements for the initial election in the district. No primary
32 elections may be held for the board.

33 (7) When a vacancy occurs in the board, the legislative authority
34 of the county within which the district, or the largest portion of the
35 district, is located, shall appoint someone who meets the
36 qualifications in subsection (4) of this section to serve until a
37 person is elected, at the next special district general election
38 occurring sixty or more days after the vacancy has occurred, to serve

1 the remainder of the unexpired term. The person so elected shall take
2 office immediately when qualified as defined in RCW 29.01.135.

3 (8) If an election for the position which became vacant would
4 otherwise have been held at this special district election, only one
5 election shall be held, and the person elected to fill the succeeding
6 term for that position takes office immediately when qualified as
7 defined in RCW 29.01.135 and serves both the remainder of the unexpired
8 term and the succeeding term. A vacancy occurs upon the death,
9 resignation, or incapacity of a board member, or whenever the board
10 member ceases being a qualified voter of the district.

11 (9) An elected or appointed member of a board, or a candidate for
12 a board, must be a qualified voter of the district as provided in
13 subsection (4) of this section; however, the state, its agencies and
14 political subdivisions, or their designees under RCW 85.38.010(3) are
15 not eligible for election or appointment.

16 NEW SECTION. **Sec. 19.** BOARD--COMPENSATION AND EXPENSES. Board
17 members may receive up to seventy dollars for attendance at official
18 meetings of the board and for each day or major part thereof served and
19 for all necessary services actually performed in connection with duties
20 as a member. The board shall fix the compensation to be paid to the
21 members, secretary, and all other agents and employees of the district.
22 Compensation for the members shall not exceed six thousand seven
23 hundred twenty dollars in one calendar year. A member is entitled to
24 reimbursement for reasonable expenses actually incurred in connection
25 with service on the board, including subsistence and lodging, while
26 away from the member's place of residence and mileage for use of a
27 privately owned vehicle in accordance with chapter 42.24 RCW.

28 Any member may waive all or any portion of the compensation payable
29 under this section for any period during his or her term of office by
30 filing a written waiver with the secretary as provided in this section.
31 The waiver, to be effective, must be filed any time after the member's
32 election and before the date on which the compensation would otherwise
33 be paid. The waiver shall specify the month or period of months for
34 which it is made.

35 NEW SECTION. **Sec. 20.** BOARD--BOND. Each board member, whether
36 elected or appointed, shall enter into a bond, payable to the district.
37 The bond shall be in the sum of not less than one thousand dollars nor

1 more than five thousand dollars, as set forth in the memorandum of
2 agreement provided in this chapter. The bond shall be conditioned on
3 the faithful performance of the member's duties on the board and shall
4 be filed with the county clerk of the county within which the district,
5 or the largest portion of the district, is located.

6 NEW SECTION. **Sec. 21.** GENERAL ELECTIONS. General elections shall
7 be held in each district on the first Tuesday after the first Monday in
8 February in each even-numbered year. The auditor of the county within
9 which a district, or the largest portion of a district, is located may
10 provide for special elections whenever necessary.

11 NEW SECTION. **Sec. 22.** VOTING RIGHTS. (1) Eligible voters of the
12 district, as specified in this chapter shall receive two votes at any
13 election.

14 (2) If multiple undivided interests, other than community property
15 interests, exist in a water right, well, or lot or parcel, and no
16 person owns a majority undivided interest, the owners of undivided
17 interests at least equal to a majority interest may designate in
18 writing:

19 (a) Which owner is eligible to vote and may cast two votes; or

20 (b) Which two owners are eligible to vote and may cast one vote
21 each.

22 (3) If the water right, well, or land is owned as community
23 property, each spouse is entitled to one vote if both spouses otherwise
24 qualify to vote, unless one spouse designates in writing that the other
25 spouse may cast both votes.

26 (4) A corporation, partnership, or governmental entity shall
27 designate:

28 (a) A natural person to cast its two votes; or

29 (b) Two natural persons to each cast one of its two votes.

30 NEW SECTION. **Sec. 23.** PRESUMED ELIGIBLE VOTERS' LIST--NOTICE OF
31 REQUIREMENTS OF VOTING AUTHORITY--COPY OF VOTERS' LIST TO COUNTY
32 AUDITOR. (1) Each district shall prepare and maintain a list of
33 presumed eligible voters and shall ensure that the list includes:

34 (a) The assessor's tax number for each lot or parcel in the
35 district;

36 (b) Each water right or well number in the district;

1 (c) The name or names of the owners of such water rights, well, or
2 lots and parcels and their mailing address;

3 (d) The extent of the ownership interest of the persons; and

4 (e) If the persons are natural persons, whether they are known to
5 be registered voters in the state of Washington.

6 (2) Whenever a voters' list is prepared, the district shall attempt
7 to notify each owner of the requirements necessary to establish voting
8 authority to vote. Whenever water rights, wells, or lots or parcels in
9 the district are sold, the district shall attempt to notify the
10 purchasers of the requirements necessary to establish voting authority.

11 (3) Each district shall provide a copy of the voters' list, and any
12 revised list, to the auditor of the county within which all or the
13 largest portion of the district is located. The district must compile
14 the list of eligible voters and provide it to the county auditor by the
15 first day of November preceding the special district general election.
16 If the district fails to provide the county auditor with the list of
17 qualified voters by the required date, the county auditor shall compile
18 the list and charge the district for the costs required for its
19 preparation. The county auditor may not be held responsible for any
20 errors in the list.

21 NEW SECTION. **Sec. 24.** ELECTIONS--WHEN NOT REQUIRED. (1) No
22 election shall be held to elect a member of a board, or to fill the
23 remainder of an unexpired term which arose from a vacancy on the board,
24 if no one or only one person files for the position.

25 (2) If only one person files for the position, he or she is
26 considered to have been elected to the position at the election that
27 otherwise would have taken place for the position.

28 (3) If no one files for the position, and the upcoming election is
29 one at which someone would have been elected to fill the expired term,
30 the position is treated as vacant at the expiration of the term.

31 (4) If no one files for the position, and the upcoming election is
32 one at which someone would have been elected to fill the remaining term
33 of office, the person appointed to fill the vacancy is considered to
34 have been elected to the position at the election and serves for the
35 remainder of the unexpired term.

36 NEW SECTION. **Sec. 25.** ELECTIONS--AUDITOR'S ASSISTANCE--NOTICE--
37 AUDITOR'S COSTS. (1) The auditor of the county within which a

1 district, or the largest portion of a district, is located shall assist
2 the district with its elections as provided in this section.

3 (2) The county auditor shall publish notice of an election to
4 create a district, and notice of all special district elections not
5 conducted by mail, in a newspaper of general circulation in the
6 district at least once not more than ten nor less than three days
7 before the election. The notices shall describe the election and
8 indicate the election site or sites in the district and the date and
9 times ballots may be cast.

10 (3) In a district with at least five hundred qualified voters, the
11 county auditor shall publish in a newspaper of general circulation in
12 the district a notice of the filing period and place for filing a
13 declaration of candidacy to become a member of the board. The auditor
14 shall publish this notice at least seven days before the closing of the
15 filing period. In a district with less than five hundred qualified
16 voters, the district shall mail or deliver notice described in this
17 subsection to each qualified voter of the district at least seven days
18 before the closing of the filing period.

19 (4) All costs of the county auditor incurred related to elections
20 under this chapter shall be reimbursed by the district.

21 NEW SECTION. **Sec. 26.** ELECTIONS--AUDITOR TO CONDUCT--ELECTION BY
22 MAIL. (1) In a district with less than five hundred qualified voters,
23 the district must contract with the county auditor to conduct the
24 special district elections. The county auditor may conduct the
25 election by mail.

26 (2) In a district with at least five hundred qualified voters, the
27 district may contract with the county auditor to staff the voting site
28 during the election or contract with the county auditor to conduct the
29 election by mail. A district with at least five hundred qualified
30 voters may also choose to conduct its own elections. A district that
31 conducts its own elections must enter into an agreement with the county
32 auditor, specifying the responsibilities of both parties.

33 (3) If the county auditor conducts a district election by mail, the
34 provisions of chapter 29.36 RCW which govern elections by mail, except
35 for the requirements of RCW 29.36.120, shall apply.

36 NEW SECTION. **Sec. 27.** ELECTION OFFICIALS--DUTIES--VOTING HOURS--
37 CHALLENGED BALLOTS--ABSENTEE BALLOTS. For special district elections

1 that are not conducted by mail, the board shall appoint three voters of
2 the district, who may be members of the board, to act as election
3 officials, unless the district contracts with the county auditor to
4 staff the election site. The election officials shall distribute a
5 ballot or ballots to each voter of the district who arrives at the
6 voting place, during the hours for the election on the day of the
7 election, and requests a ballot. The election officials shall also
8 provide ballots to those persons arriving at the polling place during
9 the hours for the election on the day of the election who present
10 documents or evidence sufficient to establish their eligibility to
11 vote. A person arriving at the polling place at the proper time who
12 demands a ballot, but who fails to present documents or evidence that,
13 in the opinion of the election officials, is sufficient to establish
14 eligibility to vote, must be given a ballot clearly marked as
15 "challenged" and must be allowed to vote. Each challenged ballot must
16 be numbered consecutively, and a list of such persons and their ballot
17 numbers must be made.

18 The board shall designate those hours from seven o'clock a.m. to
19 eight o'clock p.m. during which the election will be held; however, at
20 least six consecutive hours must be designated. When the election is
21 over, the election officials shall secure the ballots and transport
22 them to the county auditor's office by noon of the day following the
23 election. The auditor may, at his or her discretion, station at the
24 election site a deputy auditor or deputy auditors, who shall observe
25 the election and transport the ballots to the auditor's office. The
26 auditor shall count the ballots and certify the count of votes for and
27 against each measure and for each candidate appearing on the ballot.
28 The auditor shall make a separate count of any challenged ballots. The
29 auditor shall count a challenged ballot as a normal ballot if
30 documentation or evidence is supplied to the auditor before four
31 o'clock p.m. on the day after the election that, in the opinion of the
32 auditor, is sufficient to establish the person's eligibility to vote.

33 Additionally, voting by absentee ballot is allowed in every
34 district. A request for an absentee ballot may be made by an eligible
35 voter by mail or in person to the county auditor who supervises the
36 special district elections. An absentee ballot shall be provided to
37 each voter of a district requesting such a ballot under this section.
38 A person requesting such a ballot may present information establishing
39 his or her eligibility to vote in the district. The auditor shall

1 provide an absentee ballot to each person requesting an absentee ballot
2 who is either included on the list of presumed eligible voters or who
3 submits information which, in the auditor's opinion, establishes his or
4 her eligibility to vote. The names of persons thus determined to be
5 eligible to vote shall be added to the list of presumed eligible voters
6 for the appropriate special district. The request for an absentee
7 ballot must be made no more than forty-five days before the election.
8 To be valid, absentee ballots must be postmarked on or before the day
9 of the election and mailed to the county auditor.

10 NEW SECTION. **Sec. 28.** REFUNDING GENERAL OBLIGATION BONDS. (1)
11 The board may, by resolution, without submitting the matter to the
12 voters of the district, provide for the issuance of refunding general
13 obligation bonds to refund any outstanding general obligation bonds, or
14 any part thereof, at maturity thereof, or before the maturity thereof,
15 if they are subject to call for prior redemption, or if all of the
16 owners thereof consent.

17 (2) The total cost to the district over the life of the refunding
18 bonds or refunding portion of an issue of bonds shall not exceed the
19 total cost to the district which the district would have incurred but
20 for the refunding over the remainder of the life of the bonds to be
21 refunded thereby.

22 (3) The refunding bonds may be exchanged for the bonds to be
23 refunded thereby, or may be sold as the board deems to be in the best
24 interest of the district. The proceeds of the sale shall be used
25 exclusively for paying, retiring, and canceling the bonds to be
26 refunded and the interest thereon. The bonds may be of any form,
27 including bearer bonds or registered bonds, as provided in RCW
28 39.46.030.

29 NEW SECTION. **Sec. 29.** MAINTENANCE OR GENERAL FUND AND SPECIAL
30 FUNDS--USE OF SURPLUS IN MAINTENANCE OR GENERAL FUND. If a district
31 has accumulated money in the maintenance fund or general fund of the
32 district in excess of the requirements of that fund, the board may, at
33 its discretion, use any of that surplus money for any of the following
34 purposes:

35 (1) Redemption or servicing of outstanding obligations of the
36 district;

37 (2) Maintenance expenses of the district;

1 (3) Construction or acquisition of any facilities necessary to
2 carry out the purposes of the district; or

3 (4) Any other proper district purpose.

4 NEW SECTION. **Sec. 30.** MAINTENANCE OR GENERAL FUND AND SPECIAL
5 FUNDS--DEPOSITS AND INVESTMENTS. Whenever there is accumulated, in any
6 general or special fund of a district, money the disbursement of which
7 is not yet due, the board may, by resolution, authorize the treasurer
8 to deposit or invest the money in qualified public depositories, or to
9 invest the money in any investment permitted at any time by RCW
10 36.29.020. However, the county treasurer may refuse to invest any
11 district money the disbursement of which will be required during the
12 period of investment to meet outstanding obligations of the district.

13 NEW SECTION. **Sec. 31.** DEPOSIT ACCOUNT REQUIREMENTS. The district
14 shall deposit district money in any account, which may be interest-
15 bearing, subject to requirements and conditions prescribed by the state
16 auditor. The account must be in the name of the district.

17 NEW SECTION. **Sec. 32.** LOANS FROM MAINTENANCE OR GENERAL FUNDS TO
18 CONSTRUCTION FUNDS OR OTHER FUNDS. The board may, by resolution,
19 authorize and direct a loan or loans from maintenance funds or general
20 funds of the district to construction funds or other funds of the
21 district, if the loan does not, in the opinion of the board, impair the
22 ability of the district to operate and maintain its water banking
23 facilities.

24 NEW SECTION. **Sec. 33.** A new section is added to chapter 90.03 RCW
25 to read as follows:

26 The water resource management districts provided for in chapter
27 90.-- RCW (sections 1 through 32 and 37 through 39 of this act) are not
28 subject to the requirements of this chapter if those requirements
29 conflict with the provisions of chapter 90.-- RCW (sections 1 through
30 32 and 37 through 39 of this act).

31 NEW SECTION. **Sec. 34.** A new section is added to chapter 90.42 RCW
32 to read as follows:

33 The water resource management districts provided for in chapter
34 90.-- RCW (sections 1 through 32 and 37 through 39 of this act) are not

1 subject to the requirements of this chapter if those requirements
2 conflict with the provisions of chapter 90.-- RCW (sections 1 through
3 32 and 37 through 39 of this act).

4 NEW SECTION. **Sec. 35.** A new section is added to chapter 90.44 RCW
5 to read as follows:

6 The water resource management districts provided for in chapter
7 90.-- RCW (sections 1 through 32 and 37 through 39 of this act) are not
8 subject to the requirements of this chapter if those requirements
9 conflict with the provisions of chapter 90.-- RCW (sections 1 through
10 32 and 37 through 39 of this act).

11 NEW SECTION. **Sec. 36.** A new section is added to chapter 90.54 RCW
12 to read as follows:

13 The water resource management districts provided for in chapter
14 90.-- RCW (sections 1 through 32 and 37 through 39 of this act) are not
15 subject to the requirements of this chapter if those requirements
16 conflict with the provisions of chapter 90.-- RCW (sections 1 through
17 32 and 37 through 39 of this act).

18 NEW SECTION. **Sec. 37.** REPORT TO LEGISLATURE. The department
19 shall report biennially, by December 31st of each even-numbered year,
20 to the appropriate committees of the legislature on the districts
21 formed or sought to be formed under the authority of this chapter, the
22 volumes and length of terms of water accepted for deposit to and
23 permitted for withdrawal from districts formed, and a general summary
24 of their funding sources and disposition of revenues and expenses.

25 NEW SECTION. **Sec. 38.** SEVERABILITY. If any provision of this act
26 or its application to any person or circumstance is held invalid, the
27 remainder of the act or the application of the provision to other
28 persons or circumstances is not affected.

29 NEW SECTION. **Sec. 39.** CAPTIONS NOT LAW. Captions used in this
30 chapter are not any part of the law.

1 NEW SECTION. **Sec. 40.** Sections 1 through 32 and 37 through 39 of
2 this act constitute a new chapter in Title 90 RCW.

--- **END** ---