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**BILL REQUEST - CODE REVISER'S OFFICE**

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BILL REQ. #: Z-0996.2/06 2nd draft

ATTY/TYPIST: SCG:mos

BRIEF DESCRIPTION: Managing Columbia river water resources.

1 AN ACT Relating to management of water resources for the mainstem  
2 of the Columbia river; reenacting and amending RCW 43.84.092; adding a  
3 new chapter to Title 90 RCW; making an appropriation; and providing an  
4 effective date.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that the Columbia  
7 river is a vital economic, cultural, and natural resource to the state  
8 and its residents. The water of the mainstem of the river supports  
9 critically important municipal, agricultural, scenic, and recreational  
10 uses, fish and wildlife habitat, commercial, sport, and subsistence  
11 fisheries, navigation, power production, and communities and economies  
12 that depend on agriculture, recreation, fish, and wildlife. Conflict  
13 and competition among instream and out-of-stream water uses has  
14 prevailed along the Columbia mainstem in recent years; there is a need  
15 for state action and state investment to reduce these conflicts and  
16 reliably secure the economic and natural resource benefits associated  
17 with the water of the Columbia river for Washington residents. To  
18 realize these benefits, it is in the public interest to support  
19 implementation of voluntary regional agreements that will deliver

1 reliable quantities of water to meet out-of-stream needs and, at the  
2 same time, improve stream flows for the benefit of fish and wildlife  
3 and other instream values.

4 (2) The Columbia river is distinguished by many unique qualities.  
5 These include:

6 (a) The river is by far the state's largest river, and the scale of  
7 the resource creates unique hydrological and biological conditions that  
8 are not duplicated in any other river basin;

9 (b) The river is a vital cultural resource for Columbia river  
10 tribal nations, including the Spokane Tribe, the Colville Confederated  
11 Tribes, the Yakama Nation, the Confederated Tribes of the Umatilla  
12 Indian Reservation, the Confederated Warm Springs Tribes, and the Nez  
13 Perce Tribe;

14 (c) The river is controlled by the federal Columbia river power  
15 system to provide electric power to the Pacific Northwest;

16 (d) Federal control, and the facilities that make it possible, have  
17 created a situation in which most of the river has taken on the  
18 characteristics of a series of linked lakes;

19 (e) The Hanford reach is the last free-flowing reach of the  
20 Columbia river in Washington state and has outstanding value as a  
21 scenic and recreational area, as a national monument, and as the  
22 spawning ground for the last healthy population of wild salmon on the  
23 Columbia mainstem, supporting commercial, sport, and subsistence  
24 fisheries;

25 (f) Flows on the river vary on a scale that is unique in North  
26 America, often varying in a single day by more than one hundred  
27 thousand cubic feet per day at McNary Dam as water is released through  
28 facilities to generate power;

29 (g) The Columbia river treaty implemented between the United States  
30 and Canada establishes flood control and power generation as its  
31 principle purposes and influences the flows of the Columbia river to a  
32 great extent;

33 (h) The river is a critical migratory corridor for many stocks of  
34 salmon and steelhead including some stocks listed under the state or  
35 federal endangered species acts;

36 (i) River flows are a key factor in salmon and steelhead survival  
37 and in meeting water quality standards;

1 (j) When water is released or spilled over hydroelectric  
2 facilities, it can provide for passage of juvenile salmon and adult  
3 steelhead kelts, but it may also pose water quality concerns as gases  
4 are entrained in the water column and require special precautions and  
5 management practices to prevent harm from occurring to resident and  
6 anadromous fish; and

7 (k) The river's contribution to the state's culture and economy in  
8 the forms of power generation, agriculture, industry, navigation, and  
9 commercial, recreational, and subsistence fisheries is unequalled.

10 (3) In recognition of the extraordinary nature of the Columbia  
11 river, it is in the public interest to develop a separate water  
12 resources management approach for the Columbia river.

13 (4) It is the intent of the legislature to establish a water  
14 resources management approach crafted to the specific biological,  
15 political, and economic context of the Columbia river. This chapter is  
16 not intended to establish precedent for other rivers in the state. It  
17 is further the intent of the legislature that implementation of this  
18 chapter be realized primarily through voluntary regional agreements,  
19 that the regions of the Columbia basin be treated fairly and equitably  
20 in these agreements, and that a combination of state investment and  
21 investment by water users support implementation of agreements.

22 NEW SECTION. **Sec. 2.** The definitions in this section apply  
23 throughout this chapter unless the context clearly indicates otherwise.

24 (1) "Department" means the department of ecology.

25 (2) "Columbia mainstem" means all surface water between the border  
26 of the United States and Canada and the Bonneville dam, and surface  
27 waters of the Snake river from the tailrace of the Ice Harbor dam to  
28 the confluence with the Columbia river, and all ground waters within  
29 one mile of the ordinary high-water line of these Columbia and Snake  
30 river surface waters.

31 (3) "Conservation" means actions that reduce water loss during  
32 transportation or distribution, or that improve water use efficiency,  
33 resulting in a reduction in the amount of water consumed and a  
34 concomitant reduction in the amount of water diverted or withdrawn.

35 (4) "Conserved water" means water that is no longer diverted or  
36 withdrawn as a result of the implementation of conservation measures.

1 (5) "Voluntary" means an action or agreement proceeding from one's  
2 own free choice or consent rather than as the result of duress,  
3 coercion, or deception and that is made with an understanding of the  
4 consequences.

5 NEW SECTION. **Sec. 3.** (1) The department shall secure access to  
6 and manage water to offset out-of-stream water uses and, at the same  
7 time, improve stream flows for the benefit of fish and wildlife and  
8 other instream values.

9 (2) In the near term, the department shall focus on the following  
10 methods to secure access to water:

11 (a) Conservation;

12 (b) Changes in management of existing infrastructure, and  
13 agreements between state and federal agencies or other affected  
14 parties, to retain water during periods of surplus and make such water  
15 available during periods of low flow;

16 (c) Aquifer storage and recovery projects, particularly in the  
17 Odessa subarea;

18 (d) Acquisition and transfer of water from willing buyers to  
19 willing sellers; and

20 (e) Summer releases of water currently stored in Canada and  
21 released during the winter. These releases could provide access to  
22 additional water during summer months to benefit both instream and out-  
23 of-stream water uses. The department may work in partnership with the  
24 United States entity under the Columbia river treaty to explore the  
25 feasibility of this approach.

26 (3) Over the longer term, the department shall work with federal  
27 agencies, tribal governments, local governments, neighboring states,  
28 and other partners to aggressively pursue completion of cost-effective,  
29 multipurpose, off-channel water storage.

30 (4) Water secured by the state to offset out-of-stream uses shall  
31 be held by the state permanently in trust and managed to improve flows  
32 for the benefit of fish and wildlife and other instream values.

33 (5) The department shall focus its efforts on the following  
34 out-of-stream uses:

35 (a) An alternative to ground water for farmers in the Odessa  
36 subarea, sources of municipal water supply for pending applications,

1 and a new uninterruptible supply of water for holders of interruptible  
2 water rights on the mainstem; and

3 (b) New municipal, domestic, industrial, and irrigation water needs  
4 along the Columbia river mainstem.

5 (6) Water permanently secured by the state for instream uses shall  
6 be held by the state permanently in trust and managed in consultation  
7 with fish and wildlife resource managers to maximize benefits to the  
8 state. Special attention shall be paid to the needs of threatened or  
9 endangered species as determined under state or federal law.

10 (7) To provide public accountability for state water management  
11 efforts, the department shall report annually to the appropriate  
12 standing committees of the legislature and to the governor regarding  
13 the quantities of water that have been secured by the department.  
14 Reports must account for the total quantity of water that has been  
15 secured, the quantities allocated to instream and out-of-stream uses,  
16 and any water secured that has not been placed in trust status and the  
17 reasons why this has not occurred.

18 NEW SECTION. **Sec. 4.** (1) To support securing water through  
19 conservation, the department, the conservation commission, and the  
20 department of fish and wildlife shall work, as local circumstances  
21 indicate are appropriate, with local conservation districts, irrigation  
22 districts, the United States bureau of reclamation, water users, fish,  
23 wildlife, and natural resource managers, local watershed planning  
24 organizations, and other parties to develop a Columbia water  
25 conservation inventory. The inventory must include:

26 (a) A list of potential new conservation projects or expansions of  
27 existing conservation projects in the Columbia river basin, including  
28 feasible projects in adjoining tributaries;

29 (b) Estimates of project costs and benefits;

30 (c) A ranking of projects from the least expensive per acre-foot of  
31 water conserved to the most expensive; and

32 (d) A ranking of projects from the most beneficial to fish and  
33 wildlife to the least beneficial.

34 (2) The department, the conservation commission, and the department  
35 of fish and wildlife shall complete the Columbia water conservation  
36 inventory by November 15, 2006, and update the inventory annually  
37 thereafter.

1 (3) To the extent practical, the Columbia water conservation  
2 inventory should rely on conservation project inventories already  
3 completed by existing local planning groups.

4 (4) Subject to the availability of legislative appropriations, the  
5 department and any other participating agency of the state shall  
6 implement Columbia river water conservation projects. Decisions about  
7 which conservation projects to fund should consider both costs and  
8 benefits and should ensure that the most cost-effective and beneficial  
9 conservation resources consistent with the program's objectives are  
10 acquired before more expensive alternatives or less beneficial  
11 projects.

12 (5) Water conserved as a result of state investment in conservation  
13 projects shall be held permanently in trust by the state in proportion  
14 to the share of funding provided by the state to complete the project  
15 and used to offset new out-of-stream uses and to improve instream flows  
16 for the benefit of fish and wildlife and other instream values. If  
17 other public moneys are invested in the conservation project, the  
18 source of those funds may require the placement of additional conserved  
19 water into trust.

20 NEW SECTION. **Sec. 5.** (1) In securing access to water through  
21 acquisition, the department shall consider, in addition to permanent  
22 acquisitions, flexible, seasonal, or other temporary leases of water  
23 rights. Lease agreements provide a temporary mechanism of water  
24 acquisition that may be useful to bolster both instream and  
25 out-of-stream supplies during periods of shortage.

26 (2) When the state permanently acquires a water right to benefit  
27 water resource management in the mainstem of the Columbia river, and a  
28 local government's property tax base is diminished as a result of the  
29 acquisition, the state shall provide in-lieu tax payments to local  
30 governments equal to the diminishment.

31 NEW SECTION. **Sec. 6.** (1) To establish a more complete  
32 understanding of current water uses, the department shall collect and  
33 publish data on:

34 (a) The total aggregate quantity of water issued under state  
35 permits and certificates and filed under state claims on the Columbia  
36 mainstem and for ground water within one mile of the mainstem;

1 (b) The total aggregate volume of current water use under these  
2 rights as metered and reported by water users;

3 (c) The quantity of water that is currently inchoate or under  
4 development under these rights;

5 (d) Conservation projects that have been implemented under this  
6 chapter and the amount of water conservation they have achieved; and

7 (e) Other relevant water use data.

8 (2) The department shall collect this data annually and publish it  
9 on the department's web site no later than November 1st of each year.

10 NEW SECTION. **Sec. 7.** (1) To the extent that water users  
11 voluntarily organize themselves to adopt water use and management  
12 strategies, the department may enter into regional agreements to  
13 establish the conditions under which new out-of-stream water uses will  
14 be approved.

15 (2) At a minimum, the department must ensure that voluntary  
16 regional agreements:

17 (a) Provide water to out-of-stream users;

18 (b) Provide a quantity of water retained instream and placed  
19 instream upriver from the anticipated points of withdrawal to more than  
20 offset new out-of-stream water uses;

21 (c) Ensure that water retained instream is managed in a way that  
22 benefits fish and wildlife and other instream values on the Columbia  
23 mainstem;

24 (d) Require annual measurement and reporting on the quantity of  
25 water diverted or withdrawn for out-of-stream uses in accordance with  
26 the measurement and metering requirements under current law, and track  
27 and account for the quantity of water secured for instream purposes;

28 (e) Promote the highest levels of conservation and efficiency  
29 appropriate to the type of water use and the land upon which the water  
30 use would occur;

31 (f) Comport with all applicable state laws relating to water  
32 resources, except to the extent that this chapter supersedes any  
33 provisions in other state water resources law; and

34 (g) Not impair other existing water rights.

35 (3) To implement voluntary regional agreements, the department may:

36 (a) When necessary, process applications for water rights out of  
37 priority order; and

1 (b) Collect payments made by individuals to comply with the terms  
2 and conditions of a voluntary regional agreement and deposit such  
3 payments into the Columbia river infrastructure account established in  
4 section 10 of this act.

5 (4) The department may not authorize new out-of-stream uses under  
6 voluntary regional agreements until offset water is available instream.

7 (5) By their nature, voluntary regional agreements are developed to  
8 meet specific, locally derived situations. The department may not use  
9 any voluntary regional agreement to establish precedential requirements  
10 or standards beyond those required by existing law and this chapter for  
11 other agreements which may be proposed.

12 (6) The department may take appropriate action to require any  
13 individual water user or groups of water users who have received  
14 permits in accordance with a voluntary regional agreement to comply  
15 with the terms of the voluntary regional agreement and with the permits  
16 issued thereunder.

17 (7) Permits issued, or other actions taken by the department, in  
18 accordance with voluntary regional agreements are not subject to the  
19 consultation requirements under WAC 173-531A-060 and 173-563-020(4).

20 NEW SECTION. **Sec. 8.** (1) Before entering into a voluntary  
21 regional agreement, the department must:

22 (a) Consult with, and carefully consider the recommendations of,  
23 the department of fish and wildlife regarding the benefits that will  
24 result for fish and wildlife species and other instream values on the  
25 mainstem of the Columbia river; and

26 (b) Provide a thirty-day public review and comment period for draft  
27 agreements and carefully consider any public comments received.

28 (2) As part of its consultation responsibility, the department of  
29 fish and wildlife shall consult with co-resource managers in tribal  
30 governments and shall inform the department of the recommendations of  
31 co-resource managers.

32 (3) Consultation between the department and the department of fish  
33 and wildlife, and the related consultation between the department of  
34 fish and wildlife and co-resource managers, shall occur, and comments  
35 shall be carefully considered, before draft voluntary regional  
36 agreements are provided for public review under subsection (2)(b) of  
37 this section. The department of fish and wildlife shall provide

1 comments, including the recommendations of co-resource managers, to the  
2 department within thirty days following receipt of a draft agreement  
3 for review.

4 NEW SECTION. **Sec. 9.** (1) As an interim strategy to jump-start  
5 water supply solutions for the Odessa subarea, municipalities, and  
6 interruptible water right holders on the mainstem, the department shall  
7 implement agreements between the state of Washington, the United States  
8 bureau of reclamation, and the Columbia basin project irrigation  
9 districts regarding drawdown of Lake Roosevelt, and the corresponding  
10 agreement in principle between the state of Washington and the Colville  
11 Confederated Tribes within appropriations provided for these purposes.  
12 Any drawdown must accomplish refill of the reservoir by September 30th  
13 of each calendar year to protect resident fish species above Grand  
14 Coulee dam.

15 (2) Prior to implementing any drawdown affecting the waters of Lake  
16 Roosevelt or associated tributaries, the department shall consult with  
17 the Spokane and Colville Tribes and the county legislative authorities  
18 of Stevens, Ferry, Okanogan, and Lincoln counties in drafting the  
19 drawdown proposal and developing appropriate mitigation strategies.

20 NEW SECTION. **Sec. 10.** (1) The Columbia river infrastructure  
21 account is created in the state treasury.

22 (2) Appropriations from the account must be used by the department  
23 to secure access to water supplies benefiting the mainstem of the  
24 Columbia river including, but not limited to: Water acquisitions,  
25 storage projects, conservation projects, or other agreements that  
26 result in the availability of additional water supplies in the summer  
27 months of the year.

28 (3) The account may receive payments made to the department under  
29 voluntary regional agreements affecting the mainstem of the Columbia  
30 river. The legislature may deposit operating or capital resources into  
31 the account as necessary to achieve the purposes of this chapter.

32 (4) The account is subject to legislative appropriation.

33 (5) Interest earned by deposits to the account will be retained in  
34 the account.

1       **Sec. 11.** RCW 43.84.092 and 2005 c 514 s 1106, 2005 c 353 s 4, 2005  
2 c 339 s 23, 2005 c 314 s 110, 2005 c 312 s 8, and 2005 c 94 s 2 are  
3 each reenacted and amended to read as follows:

4       (1) All earnings of investments of surplus balances in the state  
5 treasury shall be deposited to the treasury income account, which  
6 account is hereby established in the state treasury.

7       (2) The treasury income account shall be utilized to pay or receive  
8 funds associated with federal programs as required by the federal cash  
9 management improvement act of 1990. The treasury income account is  
10 subject in all respects to chapter 43.88 RCW, but no appropriation is  
11 required for refunds or allocations of interest earnings required by  
12 the cash management improvement act. Refunds of interest to the  
13 federal treasury required under the cash management improvement act  
14 fall under RCW 43.88.180 and shall not require appropriation. The  
15 office of financial management shall determine the amounts due to or  
16 from the federal government pursuant to the cash management improvement  
17 act. The office of financial management may direct transfers of funds  
18 between accounts as deemed necessary to implement the provisions of the  
19 cash management improvement act, and this subsection. Refunds or  
20 allocations shall occur prior to the distributions of earnings set  
21 forth in subsection (4) of this section.

22       (3) Except for the provisions of RCW 43.84.160, the treasury income  
23 account may be utilized for the payment of purchased banking services  
24 on behalf of treasury funds including, but not limited to, depository,  
25 safekeeping, and disbursement functions for the state treasury and  
26 affected state agencies. The treasury income account is subject in all  
27 respects to chapter 43.88 RCW, but no appropriation is required for  
28 payments to financial institutions. Payments shall occur prior to  
29 distribution of earnings set forth in subsection (4) of this section.

30       (4) Monthly, the state treasurer shall distribute the earnings  
31 credited to the treasury income account. The state treasurer shall  
32 credit the general fund with all the earnings credited to the treasury  
33 income account except:

34       (a) The following accounts and funds shall receive their  
35 proportionate share of earnings based upon each account's and fund's  
36 average daily balance for the period: The capitol building  
37 construction account, the Cedar River channel construction and  
38 operation account, the Central Washington University capital projects

1 account, the charitable, educational, penal and reformatory  
2 institutions account, the Columbia river infrastructure account, the  
3 common school construction fund, the county criminal justice assistance  
4 account, the county sales and use tax equalization account, the data  
5 processing building construction account, the deferred compensation  
6 administrative account, the deferred compensation principal account,  
7 the department of retirement systems expense account, the developmental  
8 disabilities community trust account, the drinking water assistance  
9 account, the drinking water assistance administrative account, the  
10 drinking water assistance repayment account, the Eastern Washington  
11 University capital projects account, the education construction fund,  
12 the education legacy trust account, the election account, the emergency  
13 reserve fund, The Evergreen State College capital projects account, the  
14 federal forest revolving account, the freight mobility investment  
15 account, the health services account, the public health services  
16 account, the health system capacity account, the personal health  
17 services account, the state higher education construction account, the  
18 higher education construction account, the highway infrastructure  
19 account, the high-occupancy toll lanes operations account, the  
20 industrial insurance premium refund account, the judges' retirement  
21 account, the judicial retirement administrative account, the judicial  
22 retirement principal account, the local leasehold excise tax account,  
23 the local real estate excise tax account, the local sales and use tax  
24 account, the medical aid account, the mobile home park relocation fund,  
25 the multimodal transportation account, the municipal criminal justice  
26 assistance account, the municipal sales and use tax equalization  
27 account, the natural resources deposit account, the oyster reserve land  
28 account, the perpetual surveillance and maintenance account, the public  
29 employees' retirement system plan 1 account, the public employees'  
30 retirement system combined plan 2 and plan 3 account, the public  
31 facilities construction loan revolving account beginning July 1, 2004,  
32 the public health supplemental account, the public works assistance  
33 account, the Puyallup tribal settlement account, the real estate  
34 appraiser commission account, the regional transportation investment  
35 district account, the resource management cost account, the rural  
36 Washington loan fund, the site closure account, the small city pavement  
37 and sidewalk account, the special wildlife account, the state  
38 employees' insurance account, the state employees' insurance reserve

1 account, the state investment board expense account, the state  
2 investment board commingled trust fund accounts, the supplemental  
3 pension account, the Tacoma Narrows toll bridge account, the teachers'  
4 retirement system plan 1 account, the teachers' retirement system  
5 combined plan 2 and plan 3 account, the tobacco prevention and control  
6 account, the tobacco settlement account, the transportation  
7 infrastructure account, the transportation partnership account, the  
8 tuition recovery trust fund, the University of Washington bond  
9 retirement fund, the University of Washington building account, the  
10 volunteer fire fighters' and reserve officers' relief and pension  
11 principal fund, the volunteer fire fighters' and reserve officers'  
12 administrative fund, the Washington fruit express account, the  
13 Washington judicial retirement system account, the Washington law  
14 enforcement officers' and fire fighters' system plan 1 retirement  
15 account, the Washington law enforcement officers' and fire fighters'  
16 system plan 2 retirement account, the Washington public safety  
17 employees' plan 2 retirement account, the Washington school employees'  
18 retirement system combined plan 2 and 3 account, the Washington state  
19 health insurance pool account, the Washington state patrol retirement  
20 account, the Washington State University building account, the  
21 Washington State University bond retirement fund, the water pollution  
22 control revolving fund, and the Western Washington University capital  
23 projects account. Earnings derived from investing balances of the  
24 agricultural permanent fund, the normal school permanent fund, the  
25 permanent common school fund, the scientific permanent fund, and the  
26 state university permanent fund shall be allocated to their respective  
27 beneficiary accounts. All earnings to be distributed under this  
28 subsection (4)(a) shall first be reduced by the allocation to the state  
29 treasurer's service fund pursuant to RCW 43.08.190.

30 (b) The following accounts and funds shall receive eighty percent  
31 of their proportionate share of earnings based upon each account's or  
32 fund's average daily balance for the period: The aeronautics account,  
33 the aircraft search and rescue account, the county arterial  
34 preservation account, the department of licensing services account, the  
35 essential rail assistance account, the ferry bond retirement fund, the  
36 grade crossing protective fund, the high capacity transportation  
37 account, the highway bond retirement fund, the highway safety account,  
38 the motor vehicle fund, the motorcycle safety education account, the

1 pilotage account, the public transportation systems account, the Puget  
2 Sound capital construction account, the Puget Sound ferry operations  
3 account, the recreational vehicle account, the rural arterial trust  
4 account, the safety and education account, the special category C  
5 account, the state patrol highway account, the transportation 2003  
6 account (nickel account), the transportation equipment fund, the  
7 transportation fund, the transportation improvement account, the  
8 transportation improvement board bond retirement account, and the urban  
9 arterial trust account.

10 (5) In conformance with Article II, section 37 of the state  
11 Constitution, no treasury accounts or funds shall be allocated earnings  
12 without the specific affirmative directive of this section.

13 NEW SECTION. **Sec. 12.** Section 11 of this act takes effect July 1,  
14 2006.

15 NEW SECTION. **Sec. 13.** Sections 1 through 10 of this act  
16 constitute a new chapter in Title 90 RCW.

17 NEW SECTION. **Sec. 14.** The sum of nine hundred sixty-two thousand  
18 dollars, or as much thereof as may be necessary, is appropriated for  
19 the fiscal year ending June 30, 2007, from the general fund to the  
20 department of ecology for the purposes of this act.

--- END ---