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**SUBSTITUTE SENATE BILL 6446**

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**State of Washington**

**54th Legislature**

**1996 Regular Session**

**By** Senate Committee on Ecology & Parks (originally sponsored by Senators Fraser, Swecker, Spanel, Sutherland, Drew, Hochstatter and Winsley)

Read first time 02/02/96.

1 AN ACT Relating to water rights for the use of water for instream  
2 purposes; amending RCW 90.03.380 and 90.42.080; and adding a new  
3 section to chapter 90.03 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 90.03 RCW  
6 to read as follows:

7 Notwithstanding any provision in this chapter or chapter 90.54 RCW,  
8 a right to the beneficial use of water may be maintained and  
9 established without a physical diversion of water and such right may be  
10 held by any person as defined by RCW 90.03.015 or by a unit of state or  
11 local government. A person transferring a right to the beneficial use  
12 of water for instream purposes shall not be required to obtain approval  
13 of the transfer under RCW 90.03.380, but the person shall file a notice  
14 of the transfer with the department stating the name and address of the  
15 person or governmental unit to whom the right has been transferred.

16 Such a transfer for instream purposes may be permanent or  
17 temporary. A temporary transfer may remain in effect for any length of  
18 time as determined by the water right holder. The holder of the water  
19 right temporarily transferred to instream purposes may transfer all or

1 part of the water right to the use for which the water right was  
2 initially granted at any time the holder chooses.

3 **Sec. 2.** RCW 90.03.380 and 1991 c 347 s 15 are each amended to read  
4 as follows:

5 The right to the use of water which has been applied to a  
6 beneficial use in the state shall be and remain appurtenant to the land  
7 or place upon which the same is used: PROVIDED, HOWEVER, That said  
8 right may be transferred to another or to others and become appurtenant  
9 to any other land or place of use, including an instream use without  
10 physical diversion of water, without loss of priority of right  
11 theretofore established if such change can be made without detriment or  
12 injury to existing rights. A person may transfer a water right to  
13 another person upon the express condition that a change of use to an  
14 instream use be approved under this section, and, in such cases, only  
15 the change of use and not the transfer of ownership shall be reviewed  
16 under this section. The point of diversion of water for beneficial use  
17 or the purpose of use may be changed, if such change can be made  
18 without detriment or injury to existing rights. Before any transfer of  
19 such right to use water or change of the point of diversion of water or  
20 change of purpose of use can be made, any person having an interest in  
21 the transfer or change, shall file a written application therefor with  
22 the department, and said application shall not be granted until notice  
23 of said application shall be published as provided in RCW 90.03.280.  
24 If it shall appear that such transfer or such change may be made  
25 without injury or detriment to existing rights, the department shall  
26 issue to the applicant a certificate in duplicate granting the right  
27 for such transfer or for such change of point of diversion or of use.  
28 The certificate so issued shall be filed and be made a record with the  
29 department and the duplicate certificate issued to the applicant may be  
30 filed with the county auditor in like manner and with the same effect  
31 as provided in the original certificate or permit to divert water.

32 If an application for change proposes to transfer water rights from  
33 one irrigation district to another, the department shall, before  
34 publication of notice, receive concurrence from each of the irrigation  
35 districts that such transfer or change will not adversely affect the  
36 ability to deliver water to other landowners or impair the financial  
37 integrity of either of the districts.

1 A change in place of use by an individual water user or users of  
2 water provided by an irrigation district need only receive approval for  
3 the change from the board of directors of the district if the use of  
4 water continues within the irrigation district.

5 This section shall not apply to trust water rights acquired by the  
6 state through the funding of water conservation projects under chapter  
7 90.38 RCW or RCW 90.42.010 through 90.42.070.

8 **Sec. 3.** RCW 90.42.080 and 1993 c 98 s 4 are each amended to read  
9 as follows:

10 (1) The state may acquire all or portions of existing water rights,  
11 by purchase, gift, or other appropriate means other than by  
12 condemnation, from any person or entity or combination of persons or  
13 entities. Once acquired, such rights are trust water rights. A water  
14 right acquired by the state that is expressly conditioned upon the use  
15 being limited to instream purposes shall be administered as a trust  
16 water right in compliance with such condition.

17 (2) The department may enter into leases, contracts, or such other  
18 arrangements with other persons or entities as appropriate, to ensure  
19 that trust water rights acquired in accordance with this chapter may be  
20 exercised to the fullest possible extent.

21 (3) Trust water rights may be acquired by the state on a temporary  
22 or permanent basis.

23 (4) The provisions of RCW 90.03.380 and 90.03.390 apply to  
24 transfers of water rights under this section.

25 (5) No funds may be expended for the purchase of water rights by  
26 the state pursuant to this section unless specifically appropriated for  
27 this purpose by the legislature.

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