

2 **SSB 5527** - H COMM AMD **ADOPTED 4-14-97**  
3 By Committee on Agriculture & Ecology

4

5 Strike everything after the enacting clause and insert the  
6 following:

7 "Sec. 1. RCW 90.03.380 and 1996 c 320 s 19 are each amended to  
8 read as follows:

9 (1) The right to the use of water which has been applied to a  
10 beneficial use in the state shall be and remain appurtenant to the land  
11 or place upon which the same is used: PROVIDED, HOWEVER, That ((said))  
12 the right may be transferred to another or to others and become  
13 appurtenant to any other land or place of use without loss of priority  
14 of right theretofore established if such change can be made without  
15 detriment or injury to existing rights. The point of diversion of  
16 water for beneficial use or the purpose of use may be changed, if such  
17 change can be made without detriment or injury to existing rights.  
18 Before any transfer of such right to use water or change of the point  
19 of diversion of water or change of purpose of use can be made, any  
20 person having an interest in the transfer or change, shall file a  
21 written application therefor with the department, and ((said)) the  
22 application shall not be granted until notice of ((said)) the  
23 application ((shall be)) is published as provided in RCW 90.03.280. If  
24 it shall appear that such transfer or such change may be made without  
25 injury or detriment to existing rights, the department shall issue to  
26 the applicant a certificate in duplicate granting the right for such  
27 transfer or for such change of point of diversion or of use. The  
28 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 (2) If an application for change proposes to transfer water rights  
33 from 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

1 ability to deliver water to other landowners or impair the financial or  
2 operational integrity of either of the districts.

3 (3) A change in place of use by an individual water user or users  
4 of water provided by an irrigation district need only receive approval  
5 for the change from the board of directors of the district if the use  
6 of water continues within the irrigation district, and when water is  
7 provided by an irrigation entity that is a member of a board of joint  
8 control created under chapter 87.80 RCW, approval need only be received  
9 from the board of joint control if the use of water continues within  
10 the area of jurisdiction of the joint board and the change can be made  
11 without detriment or injury to existing rights. The board of directors  
12 of an irrigation district may approve such a change if the board  
13 determines that the change: Will not adversely affect the district's  
14 ability to deliver water to other landowners; will not require the  
15 construction by the district of diversion or drainage facilities unless  
16 the board finds that the construction by the district is in the  
17 interest of the district; will not impair the financial or operational  
18 integrity of the district; and is consistent with the contractual  
19 obligations of the district.

20 (4) Subsections (1), (2), and (3) of this section do not apply to  
21 a transfer or change governed by section 2 of this act.

22 (5) This section shall not apply to trust water rights acquired by  
23 the state through the funding of water conservation projects under  
24 chapter 90.38 RCW or RCW 90.42.010 through 90.42.070.

25 (6) Any right represented by an application for a water right for  
26 which a permit for water use has not been issued by the time a transfer  
27 or change is approved under this section may not be construed as being  
28 injured or detrimentally affected by the transfer or change. An  
29 existing right that is in the status of an undeveloped water use permit  
30 under which water has not been withdrawn by the time a transfer or  
31 change is approved under this section may not be construed as being  
32 injured or detrimentally affected by the transfer or change.

33 (7) The department may not initiate relinquishment proceedings  
34 under chapter 90.14 RCW regarding a water right for which an  
35 application for a transfer or change is filed under this section during  
36 the period beginning on the date the department receives the  
37 application and ending two years after the date the department approves  
38 or denies the application.

1        NEW SECTION.    **Sec. 2.**    A new section is added to chapter 90.03 RCW  
2 to read as follows:

3        (1)(a) If a portion of the water governed by a water right is made  
4 surplus to the beneficial uses exercised under the right through the  
5 implementation of practices or technologies, including but not limited  
6 to conveyance practices or technologies, which are more efficient or  
7 more water use efficient than those under which the right was  
8 perfected, the right to use the surplus water may be changed as  
9 provided by subsection (2), (3), or (6) of this section.

10        (b) If a portion of the water governed by a water right is made  
11 surplus to the beneficial uses exercised under the right through a  
12 change in the crops grown under the water right, the right to use the  
13 surplus water may be changed as provided by subsection (3) of this  
14 section. This subsection (1)(b) does not apply to water supplied by an  
15 irrigation district.

16        (c) This section applies only to a change of an agricultural use or  
17 portion of an agricultural use of water to an agricultural use of  
18 water.

19        (2) The use within an irrigation district of water supplied by the  
20 district and made surplus as provided in subsection (1)(a) of this  
21 section shall be regulated solely as provided by the board of directors  
22 of the irrigation district. Such a use requires the approval of the  
23 board of directors of the irrigation district or must otherwise be  
24 authorized by the board. The board may approve or authorize such a use  
25 only if the use does not impair the financial or operational integrity  
26 of the district. Water supplied by an irrigation district and made  
27 surplus as provided in subsection (1)(a) of this section through  
28 actions taken by an individual water user served by the district is not  
29 available for use as a matter of right by that individual water user,  
30 but may be used by the board for the benefit of the district generally.  
31 The district's board of directors may approve or otherwise authorize  
32 under this subsection uses of such surplus water that result in the  
33 total irrigated acreage within the district exceeding the irrigated  
34 acreage recorded with the department for the district's water right if  
35 the board notifies the department of the change in the irrigated  
36 acreage within the district. Except as provided in subsection (6) of  
37 this section, such a notification provides a change in the district's  
38 water right and, upon receiving the notification, the department shall  
39 revise its records for the district's right to reflect the change.

1        If an irrigation district is within a federal reclamation project  
2 and the district's board of directors approves or otherwise authorizes  
3 under this subsection uses of such surplus water that result in the  
4 total irrigated acreage within the federal project exceeding the  
5 irrigated acreage recorded with the department for the federal  
6 project's water right, the board shall notify the department of the  
7 change in the irrigated acreage within the federal project. Except as  
8 provided by this subsection and subsection (6) of this section, such a  
9 notification provides a change in the federal reclamation project's  
10 water right and, upon receiving the notification, the department shall  
11 revise its records for the federal project's right to reflect the  
12 change except that the total irrigable acreage for a water right for a  
13 federal reclamation project may not exceed the total irrigable acreage  
14 authorized for the project by the United States and related repayment  
15 contracts.

16        (3) The right to use water made surplus as provided in subsection  
17 (1)(a) or (b) of this section but not supplied by an irrigation  
18 district may be changed to use on other parcels of land owned by the  
19 holder of the water right that are contiguous to the parcel or parcels  
20 of land upon which the use of the water was authorized by the right  
21 before such a change. The holder of the water right shall notify the  
22 department of such a change. Except as provided in subsection (6) of  
23 this section, the notification provides a change in the holder's water  
24 right and, upon receiving the notification, the department shall revise  
25 its records for the water right to reflect the change.

26        (4) A change governed by this section shall be made without loss of  
27 priority of the right.

28        (5) This section shall not be construed as authorizing the use of  
29 a junior water right in a manner that impairs or interferes with the  
30 use of a senior water right.

31        (6) It is presumed that a change in a water right made by a  
32 notification of the department under this section does not impair or  
33 interfere with the use of a water right that is senior to the right  
34 being changed. However, if upon receiving such a notification, the  
35 department determines that the change would impair or interfere with  
36 the use of a senior water right, the department shall notify the person  
37 providing the notice and shall file a notice of its decision with the  
38 superior court of the county in which the withdrawal of water under the  
39 right takes place. The notice provided by the department shall not

1 stay the change made to the water right under this section. The  
2 superior court shall review the determination of the department de  
3 novo. In such a review, the burden of proof in overcoming the  
4 presumption provided by this subsection is on the department. The  
5 presumption can be overcome only through the application of scientific  
6 data supporting the department's determination. At the conclusion of  
7 its review, the superior court shall enter a ruling canceling the  
8 change identified in the notification provided to the department,  
9 modifying the conditions or extent of that change, or affirming the  
10 change. If the ruling modifies the change or affirms the change, the  
11 department shall revise its records regarding the right accordingly.

12 A determination regarding impairment or interference made by the  
13 department under this subsection concerning a notification it receives  
14 under this section shall be made within one year of receiving the  
15 notification.

16 The presumption provided by this subsection does not apply with  
17 regard to a claim made in superior court by a person with a water right  
18 that a change made under this section by a junior water right holder  
19 impairs or interferes with the use of the person's senior water right.

20 (7) If a water right changed under this section is a right  
21 represented by a statement of claim in the water rights claims  
22 registry, the department's obligation to revise its records to reflect  
23 the change shall be accomplished by providing an amendment to the  
24 statement of claim to reflect the change.

25 (8) This section does not apply in an area with an acreage  
26 expansion program in effect on the effective date of this section that  
27 is an element of a ground water area or subarea management program as  
28 provided in RCW 90.44.445.

29 (9) Nothing in this section authorizes a change in a water right or  
30 a portion of a water right that has not been perfected through  
31 beneficial use prior to the change.

32 **Sec. 3.** RCW 90.44.100 and 1987 c 109 s 113 are each amended to  
33 read as follows:

34 (1) After an application to, and upon the issuance by the  
35 department of an amendment to the appropriate permit or certificate of  
36 ground water right, the holder of a valid right to withdraw public  
37 ground waters may, without losing his priority of right, construct  
38 wells or other means of withdrawal at a new location in substitution

1 for or in addition to those at the original location, or he may change  
2 the manner or the place of use of the water(~~(: PROVIDED, HOWEVER, That~~  
3 ~~such))~~). An amendment shall be issued only after publication of notice  
4 of the application and findings as prescribed in the case of an  
5 original application. Such amendment shall be issued by the department  
6 only on the conditions that: ((+1)) (a) The additional or substitute  
7 well or wells shall tap the same body of public ground water as the  
8 original well or wells; ((+2)) (b) use of the original well or wells  
9 shall be discontinued upon construction of the substitute well or  
10 wells; ((+3)) (c) the construction of an additional well or wells  
11 shall not enlarge the right conveyed by the original permit or  
12 certificate; and ((+4)) (d) other existing rights shall not be  
13 impaired. The department may specify an approved manner of  
14 construction and shall require a showing of compliance with the terms  
15 of the amendment, as provided in RCW 90.44.080 in the case of an  
16 original permit.

17 (2) This section does not apply to a transfer or change governed by  
18 section 2 of this act.

19 (3) Any right represented by an application for a water right for  
20 which a permit for water use has not been issued by the time an  
21 amendment is approved under this section may not be construed as being  
22 impaired by the amendment. An existing right that is in the status of  
23 an undeveloped water use permit under which water has not been  
24 withdrawn by the time an amendment is approved under this section may  
25 not be construed as being impaired by the amendment.

26 (4) The department may not initiate relinquishment proceedings  
27 under chapter 90.14 RCW regarding a water right for which an  
28 application for an amendment is filed under this section during the  
29 period beginning on the date the department receives the application  
30 and ending two years after the date the department makes a decision on  
31 the application.

32 **Sec. 4.** RCW 90.03.290 and 1994 c 264 s 84 are each amended to read  
33 as follows:

34 When an application complying with the provisions of this chapter  
35 and with the rules and regulations of the department has been filed,  
36 the same shall be placed on record with the department, and it shall be  
37 its duty to investigate the application, and determine what water, if  
38 any, is available for appropriation, and find and determine to what

1 beneficial use or uses it can be applied. If it is proposed to  
2 appropriate water for irrigation purposes, the department shall  
3 investigate, determine and find what lands are capable of irrigation by  
4 means of water found available for appropriation. If it is proposed to  
5 appropriate water for the purpose of power development, the department  
6 shall investigate, determine and find whether the proposed development  
7 is likely to prove detrimental to the public interest, having in mind  
8 the highest feasible use of the waters belonging to the public. If the  
9 application does not contain, and the applicant does not promptly  
10 furnish sufficient information on which to base such findings, the  
11 department may issue a preliminary permit, for a period of not to  
12 exceed three years, requiring the applicant to make such surveys,  
13 investigations, studies, and progress reports, as in the opinion of the  
14 department may be necessary. If the applicant fails to comply with the  
15 conditions of the preliminary permit, it and the application or  
16 applications on which it is based shall be automatically canceled and  
17 the applicant so notified. If the holder of a preliminary permit  
18 shall, before its expiration, file with the department a verified  
19 report of expenditures made and work done under the preliminary permit,  
20 which, in the opinion of the department, establishes the good faith,  
21 intent and ability of the applicant to carry on the proposed  
22 development, the preliminary permit may, with the approval of the  
23 governor, be extended, but not to exceed a maximum period of five years  
24 from the date of the issuance of the preliminary permit. The  
25 department shall make and file as part of the record in the matter,  
26 written findings of fact concerning all things investigated, and if it  
27 shall find that there is water available for appropriation for a  
28 beneficial use, and the appropriation thereof as proposed in the  
29 application will not impair existing rights or be detrimental to the  
30 public welfare, it shall issue a permit stating the amount of water to  
31 which the applicant shall be entitled and the beneficial use or uses to  
32 which it may be applied: PROVIDED, That where the water applied for is  
33 to be used for irrigation purposes, it shall become appurtenant only to  
34 such land as may be reclaimed thereby to the full extent of the soil  
35 for agricultural purposes. But where there is no unappropriated water  
36 in the proposed source of supply, or where the proposed use conflicts  
37 with existing rights, or threatens to prove detrimental to the public  
38 interest, having due regard to the highest feasible development of the  
39 use of the waters belonging to the public, it shall be duty of the

1 department to reject such application and to refuse to issue the permit  
2 asked for. If the permit is refused because of conflict with existing  
3 rights and such applicant shall acquire same by purchase or  
4 condemnation under RCW 90.03.040, the department may thereupon grant  
5 such permit. Any application may be approved for a less amount of  
6 water than that applied for, if there exists substantial reason  
7 therefor, and in any event shall not be approved for more water than  
8 can be applied to beneficial use for the purposes named in the  
9 application. In determining whether or not a permit shall issue upon  
10 any application, it shall be the duty of the department to investigate  
11 all facts relevant and material to the application. After the  
12 department approves said application in whole or in part and before any  
13 permit shall be issued thereon to the applicant, such applicant shall  
14 pay the fee provided in RCW 90.03.470: PROVIDED FURTHER, That in the  
15 event a permit is issued by the department upon any application, it  
16 shall be its duty to notify the director of fish and wildlife of such  
17 issuance.

18 This section does not apply to transfers or changes made under  
19 section 2 of this act or to applications for transfers or changes made  
20 under RCW 90.03.380 or 90.44.100.

21 **Sec. 5.** RCW 90.44.445 and 1993 c 99 s 1 are each amended to read  
22 as follows:

23 In any acreage expansion program adopted by the department as an  
24 element of a ground water management program, the authorization for a  
25 water right certificate holder to participate in the program shall be  
26 on an annual basis for the first two years. After the two-year period,  
27 the department may authorize participation for ten-year periods. The  
28 department may authorize participation for ten-year periods for  
29 certificate holders who have already participated in an acreage  
30 expansion program for two years. The department may require annual  
31 certification that the certificate holder has complied with all  
32 requirements of the program. The department may terminate the  
33 authority of a certificate holder to participate in the program for one  
34 calendar year if the certificate holder fails to comply with the  
35 requirements of the program.

36 This section applies only in an area with an acreage expansion  
37 program in effect on the effective date of this amendatory section that  
38 has been adopted by the department as an element of a ground water area



1 or subarea management program. The provisions of section 2 of this  
2 act, RCW 90.03.380, and 90.44.100 apply to transfers, changes, and  
3 amendments to permits or rights for the beneficial use of ground water  
4 in any other area."

5 Correct the title.

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