

2 **ESSB 5527** - H COMM AMD ADOPTED AS AMENDED 3/4/98  
3 By Committee on Agriculture & Ecology

4

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

7 NEW SECTION. **Sec. 1.** The legislature finds that significant  
8 water savings may be realized through the installation and use of more  
9 efficient irrigation systems and techniques. The legislature also  
10 finds that positive economic incentives, establishment of necessary  
11 legal procedures, and removal of legal barriers are needed to stimulate  
12 the development of workable technologies and farming systems that rely  
13 on lesser quantities of water.

14 The purpose of this act is to foster the use of water-efficient  
15 irrigation systems by allowing the saved water to be voluntarily  
16 transferred by the water right holder to other uses or other places of  
17 use. Additionally, the purpose is to establish incentives through  
18 enabling self-funded, private capital or public funds to provide  
19 improved market-based incentives for adopting water saving technologies  
20 and to allow the benefits of the conserved water to be fully realized.  
21 It is the intent of this act that sufficient protections be provided to  
22 assure that existing water users are not adversely affected by  
23 transfers approved under this act.

24 NEW SECTION. **Sec. 2.** The definitions in this section apply  
25 throughout this chapter unless the context clearly requires otherwise.

26 (1) "Contract" means a written legal instrument that provides for  
27 the transfer of a portion of a water right from an existing water right  
28 holder to another person for consideration.

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

30 (3) "Net water savings" has the same meaning as defined in RCW  
31 90.42.020.

32 (4) "Person" means a person, corporation, quasi-municipal  
33 corporation, municipal corporation, or state agency.

34 (5) "Reduction in evaporative loss" means the amount of water that  
35 is no longer lost to further use as a result of changing from a

1 conventional irrigation system to a water-efficient irrigation system.  
2 "Reduction in evaporative loss" includes the reduction in the amount of  
3 water consumed through evaporation during the conveyance and/or the  
4 application of water to crops and through transpiration by  
5 nonproductive plants such as cover crops associated with the change in  
6 irrigation systems, but does not include any water that contributed to  
7 return flows used to satisfy existing rights.

8 (6) "Transfer" means a transfer of, change in, or amendment to a  
9 surface or ground water right described in RCW 90.03.380 and 90.44.100  
10 or to transfer, change, or amend such a right.

11 (7) "Trust water right" means a water right transferred to and  
12 managed by the department for the benefit of instream flows or for the  
13 allocation to new uses as provided in chapter 90.38 or 90.42 RCW.

14 (8) "Water-efficient irrigation system" means a system, the use of  
15 which results in a water savings when compared to the use or loss of  
16 water experienced in conveying water and/or applying water to a crop or  
17 crops before the installation of the system.

18 NEW SECTION. **Sec. 3.** (1) A person holding a valid water right who  
19 installs a water-efficient irrigation system for use under the right  
20 may apply to the department for a transfer of the use of the water  
21 resulting from the reduction in evaporative loss plus any additional  
22 net water savings resulting from the installation. The water use may  
23 be transferred:

24 (a) To other land owned by the person with less senior water rights  
25 or that lacks a full and sufficient supply of water or for the  
26 irrigation of an additional parcel or parcels of land owned by the  
27 person. The application for such a transfer must be processed based  
28 upon the same criteria as if the transfer were to be made to another  
29 person; or

30 (b) To another person for use on other land.

31 In the latter case, the person holding the valid water right may  
32 enter into a contract with another person for the transfer of water  
33 saved through installation of the water-efficient irrigation system.  
34 A contract may allow for a permanent transfer of a portion of the  
35 original water right, or for lease agreements with set expiration  
36 dates. The applicant shall state that the contract is not permanent in  
37 the application if the contract is not permanent. Such a contract  
38 shall be filed with the department with or as a supplement to the

1 application and the department shall maintain a record of such a  
2 contract with the certificate of water right for the transferred water.

3 (2) In determining the amount that is transferrable as a result of  
4 the installation of a water-efficient irrigation system, the department  
5 shall allow the transfer of an amount equal to the reduction in the  
6 evaporative loss. The reduction in evaporative loss is a readily  
7 transferrable component of net water savings.

8 In addition, the department shall evaluate whether there are  
9 additional net water savings that result directly from installation of  
10 the water-efficient irrigation system that could be transferred without  
11 detriment to other existing water users. The department may not delay  
12 because of decisions on the determination of additional net water  
13 savings the approval of the transfer of the water that constitutes the  
14 reduction in evaporative loss.

15 (3) The use of water supplied by an irrigation district that is  
16 saved through installation of a water-efficient irrigation system as  
17 described in this section shall be regulated solely as provided by the  
18 board of directors of the irrigation district.

19 (4) A person wishing to make application for a transfer of a water  
20 right under this chapter, whether for surface or ground water, shall  
21 comply with RCW 90.03.380. The transferred portion of the water right  
22 has the same date of priority as the water right from which it  
23 originated, but between them the transferred portion of the right is  
24 inferior in priority unless otherwise provided by the parties by  
25 contract filed with the department.

26 NEW SECTION. **Sec. 4.** The department may adopt rules, in  
27 accordance with chapter 34.05 RCW, for procedures to be used to  
28 facilitate the processing of requests for water right transfers made  
29 under this chapter and to establish a streamlined procedure to quantify  
30 the reduction in the evaporative loss. The methods used by the  
31 department for calculating reductions in evaporative loss, including  
32 but not limited to those for determining the exposure of water to  
33 evaporative loss using various irrigation systems, and the pan  
34 evaporation data to be used shall be the methods and data recommended  
35 by the Washington state cooperative extension service.

36 The rules may establish procedures for the department to make  
37 preliminary findings that can be used as an initial basis for  
38 developing contracts by applicants.

1        NEW SECTION.    **Sec. 5.** An applicant shall accompany an application  
2 for a water right transfer under this chapter with a fee established in  
3 RCW 90.03.470.

4        NEW SECTION.    **Sec. 6.** In processing applications for transfers of  
5 portions of water rights under this chapter, if the department is  
6 unable to conclusively determine the validity of the original water  
7 right, the department may include a presumption of validity in the  
8 certificate of water rights. The presumption must provide to the  
9 contract purchaser the same right to the use of water embodied in the  
10 original water right.

11        The presumption of validity may not be used as evidence as to the  
12 existence or nonexistence in a water right adjudication conducted under  
13 chapter 90.03 RCW.

14        NEW SECTION.    **Sec. 7.** A holder of a water right may voluntarily  
15 enter into a contract with the department. The department may utilize  
16 funds that are now or hereafter authorized for the purchase of water  
17 savings made available under this chapter. The department shall  
18 utilize the same methods of calculating water that is transferrable to  
19 another party under this chapter in determining the amount of water  
20 that is transferrable to the state. If additional net water saved is  
21 available for the benefit of only a stream segment, the calculations  
22 may be made on a case-by-case basis while assuring no detriment to  
23 existing water users occurs.

24        NEW SECTION.    **Sec. 8.** This chapter may be known and cited as the  
25 agricultural water conservation incentives act.

26        **Sec. 9.** RCW 90.03.380 and 1997 c 442 s 801 are each amended to  
27 read as follows:

28        (1) The right to the use of water which has been applied to a  
29 beneficial use in the state shall be and remain appurtenant to the land  
30 or place upon which the same is used(~~(:—PROVIDED, HOWEVER, That the)~~).  
31 However, all or a portion of a right may be transferred to another or  
32 to others and become appurtenant to any other land or place of use  
33 without loss of priority of right theretofore established if such  
34 change can be made without detriment or injury to existing rights. The  
35 point of diversion of water for beneficial use or the purpose of use

1 may be changed, if such change can be made without detriment or injury  
2 to existing rights. A change in the place of use, point of diversion,  
3 and/or purpose of use of a water right to enable irrigation of  
4 additional acreage or the addition of new uses may be permitted if such  
5 change results in no increase in the annual consumptive quantity of  
6 water used under the water right. For purposes of this section,  
7 "annual consumptive quantity" means the estimated or actual annual  
8 amount of water diverted pursuant to the water right, reduced by the  
9 estimated annual amount of return flows, averaged over the most recent  
10 five-year period of continuous beneficial use of the water right.  
11 Before any transfer of such right to use water or change of the point  
12 of diversion of water or change of purpose of use can be made, any  
13 person having an interest in the transfer or change, shall file a  
14 written application therefor with the department, and the application  
15 shall not be granted until notice of the application is published as  
16 provided in RCW 90.03.280. If it shall appear that such transfer or  
17 such change may be made without injury or detriment to existing rights,  
18 the department shall issue to the applicant an authorization to make  
19 the change or transfer. When the applicant has completed the change or  
20 transfer, the department shall issue to the applicant a certificate in  
21 duplicate granting the right for such transfer or for such change of  
22 point of diversion or of use. The certificate so issued shall be filed  
23 and be made a record with the department and the duplicate certificate  
24 issued to the applicant may be filed with the county auditor in like  
25 manner and with the same effect as provided in the original certificate  
26 or permit to divert water.

27 (2) If an application for change proposes to transfer water rights  
28 from one irrigation district to another, the department shall, before  
29 publication of notice, receive concurrence from each of the irrigation  
30 districts that such transfer or change will not adversely affect the  
31 ability to deliver water to other landowners or impair the financial  
32 integrity of either of the districts.

33 (3) A change in place of use by an individual water user or users  
34 of water provided by an irrigation district need only receive approval  
35 for the change from the board of directors of the district if the use  
36 of water continues within the irrigation district, and when water is  
37 provided by an irrigation entity that is a member of a board of joint  
38 control created under chapter 87.80 RCW, approval need only be received  
39 from the board of joint control if the use of water continues within

1 the area of jurisdiction of the joint board and the change can be made  
2 without detriment or injury to existing rights. The board of directors  
3 of an irrigation district may approve such a change if the board  
4 determines that the change: Will not adversely affect the district's  
5 ability to deliver water to other landowners; will not require the  
6 construction by the district of diversion or drainage facilities unless  
7 the board finds that the construction by the district is in the  
8 interest of the district; will not impair the financial or operational  
9 integrity of the district; and is consistent with the contractual  
10 obligations of the district.

11 (4) This section shall not apply to trust water rights acquired by  
12 the state through the funding of water conservation projects under  
13 chapter 90.38 RCW or RCW 90.42.010 through 90.42.070.

14 NEW SECTION. Sec. 10. Sections 2 through 8 of this act constitute  
15 a new chapter in Title 90 RCW."

16 Correct the title.

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