

2 **ESSB 5527** - H COMM AMD

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, but does not include any
6 water that contributed to return flows used to satisfy existing rights.

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

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

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

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

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

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

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

--- END ---