
SENATE BILL 5467

State of Washington

55th Legislature

1997 Regular Session

By Senators Morton, Swecker and Newhouse

Read first time 01/27/97. Referred to Committee on Agriculture & Environment.

1 AN ACT Relating to water transfers; and adding a new chapter to
2 Title 90 RCW.

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

4 NEW SECTION. **Sec. 1.** The legislature finds:

5 (1) Voluntary water transfers between water users can reallocate
6 water use in a manner that will result in more efficient use of water
7 resources;

8 (2) Voluntary water transfers can help alleviate water shortages,
9 save capital outlays, reduce development costs, and provide an
10 incentive for investment in water conservation efforts by water right
11 holders; and

12 (3) The state should expedite the administrative process for
13 noncontested water transfers among water right holders, conveying
14 greater operational control to water managers and water right holders.

15 NEW SECTION. **Sec. 2.** The following definitions apply throughout
16 this chapter, unless the context clearly requires otherwise.

17 (1) "Board" means a water conservancy board created under this
18 chapter.

1 (2) "Consumptive quantity" means the actual five-year average
2 amount of water that the water right holder has diverted reduced by the
3 estimated amount of return flows.

4 (3) "Department" means the department of ecology.

5 (4) "Director" means the director of the department.

6 (5) "Petition" means a petition to organize a water conservancy
7 board.

8 (6) "WRIA" means a water resource inventory area established by
9 rule.

10 NEW SECTION. **Sec. 3.** (1) Any of the following local water
11 resource agencies may petition the department for permission to
12 organize a board and to exercise the powers and authorities of a board
13 under this chapter within the geographic boundaries of the local water
14 resource agency and any area in which the agency provides retail
15 service to customers or members:

16 (a) An irrigation district organized under chapter 87.03 RCW;

17 (b) A reclamation district organized under chapter 89.30 RCW;

18 (c) A city that operates a municipal water supply system under
19 chapter 35.92 RCW;

20 (d) A public utility district that operates a municipal water
21 supply system under chapter 54.08 RCW;

22 (e) A water district that operates a municipal water supply system
23 under chapter 57.08 RCW; or

24 (f) A cooperative or mutual corporation that operates a public
25 water system serving one hundred or more accounts.

26 (2) A board formed and organized under this section by a local
27 water resource agency constitutes a separate governmental subdivision
28 of this state, and a public body corporate and politic exercising
29 public powers. The initial and successor directors or other governing
30 body of the board shall be appointed by the governing body of the local
31 water resource agency petitioner. The number of directors shall be
32 three or more, and any director may be reappointed for successive
33 terms.

34 NEW SECTION. **Sec. 4.** (1) Water right holders who divert water for
35 use within one or more WRIAs may petition the department for permission
36 to organize a water conservancy board encompassing the geographic area
37 of the WRIAs in which the petitioners divert or use water and to

1 exercise the powers and authorities of a board under this chapter. The
2 number of directors shall be three.

3 (2) A board formed and organized under this section by three or
4 more water right holders constitutes a separate governmental
5 subdivision of this state, and a public body corporate and politic
6 exercising public powers. The board shall have a governing body of
7 three directors. Immediately upon approval of a petition to form a
8 board, the initial governing body of the board shall be appointed by
9 the director from among six individuals recommended by the petitioners.
10 The initial directors shall form and organize the board and shall serve
11 as the initial governing body of the board. When the term of any
12 initial director expires, the director shall appoint a successor based
13 on recommendations from the board. Any director may be reappointed for
14 successive terms. If any director does not complete his or her term,
15 a successor shall be appointed to fill out the remaining term. A water
16 right holder who diverts or uses water within the WRIAs included in the
17 board may be appointed as a successor director.

18 NEW SECTION. **Sec. 5.** (1) Any combination of two or more local
19 water resource agencies and one or more local water right holders may
20 jointly petition the department for permission to organize a board and
21 to exercise the powers and authorities of a board under this chapter
22 within the geographic boundaries of any of the participating local
23 water resource agencies and any area in which any agency provides
24 retail service to customers or members, or within any WRIA in which the
25 water right holder petitioners joining in the petition divert or use
26 water.

27 (2) A board formed and organized by any combination of two or more
28 local water resource agencies and one or more eligible water right
29 holders constitutes a separate governmental subdivision of this state,
30 and a public body corporate and politic exercising public powers. The
31 board shall have three directors appointed from the organizing bodies.

32 NEW SECTION. **Sec. 6.** A petition to form a board must conform to
33 the following requirements and contain the following information:

34 (1) The name and address of each petitioner;

35 (2) A brief description of the water right and use of each
36 petitioner sufficient to identify the place and source of diversion and
37 the place of use of the water;

1 (3) Identification of the geographic boundaries of any local water
2 resource agency or WRIA or WRIAs to be included within the board;

3 (4) A statement of the need for the board; and

4 (5) The proposed bylaws or an equivalent statement of the rules and
5 procedures that will govern the operation of the board once organized.
6 The bylaws shall provide, among other things, for four-year terms for
7 directors.

8 NEW SECTION. **Sec. 7.** (1) The petition shall be presented to the
9 director. As soon as practicable after it is received, but no later
10 than ninety days, the department shall determine if approval of the
11 petition would further the purposes of this chapter.

12 (2) No later than ninety days after the petition is first presented
13 to the director, the director shall act on the petition.

14 NEW SECTION. **Sec. 8.** Any board, and the directors thereof, has
15 the following powers, in addition to others granted in this chapter:

16 (1) A board may establish a water transfer exchange through which
17 all or part of the water that any person is entitled to use by reason
18 of owning or holding a water right may be listed for sale or transfer.
19 Water transfers approved by the board must remain within existing
20 beneficial uses or general sectors, and water that is being used for
21 agricultural applications is restricted to short-term or long-term
22 leases. Each board shall maintain and publish all information made
23 available to the board concerning water rights listed with the board
24 and any application to the board for approval of a water transfer.

25 (2) Each board shall establish a program and procedures, consistent
26 with applicable law and rules adopted by the department, for the
27 administration of a system of timely local approvals for water
28 transfers under this chapter. The administration of the system shall
29 be performed exclusively by the board.

30 (3) The transferor and the transferee of any proposed water
31 transfer may apply to a board for approval of such transfer if the
32 water proposed to be transferred is currently diverted or used within
33 the geographic boundaries of the board, or would be diverted or used
34 within the geographic boundaries of the board if the transfer is
35 approved. The application shall contain such information as may be
36 required by the board in order to review and act on the application.

1 (4) A board may review and approve any application for a water
2 transfer if the water proposed to be transferred is currently diverted
3 or used within the geographic boundaries of the board, or the water
4 would be diverted or used within the geographic boundaries of the board
5 if the proposed transfer is approved. Water that is diverted or used
6 within a board that is transferred to an instream use shall be deemed
7 to be used within the board. The board shall publish notice of the
8 application and send notice to state agencies as provided in RCW
9 90.03.280. Any person claiming detriment or injury to an existing
10 water right as a result of the proposed transfer may intervene in any
11 application before the board. Other interested persons may submit
12 comments. The board shall review each application for a transfer and
13 determine whether it meets the requirements of this chapter and any
14 rules adopted by the department under this chapter, and otherwise
15 complies with the law. If a majority of the governing body of the
16 board determines that the application is complete and in accordance
17 with the law, and the transfer may be made without injury or detriment
18 to existing rights of other water right holders, the board shall issue
19 to the applicant a certificate conditionally approving the transfer,
20 subject to review by the director as provided in this section.

21 (5) A board may acquire, purchase, hold, lease, manage, occupy, and
22 sell real and personal property or any interest therein, enter into and
23 perform any and all necessary contracts, appoint and employ the
24 necessary agents and employees, employ contractors, including contracts
25 for professional services to sue and be sued, and do any and all lawful
26 acts required and expedient to carry out the purposes of this chapter.
27 The board shall be an independently funded entity, as determined by the
28 board.

29 NEW SECTION. **Sec. 9.** (1) The application of the transferor and
30 the transferee in any proposed water transfer shall include, in
31 addition to other information required by the board, information
32 sufficient to establish to the board's satisfaction, the transferor's
33 entitlement to the quantity of water being transferred, and it shall
34 describe any applicable existing limitations on the right to use water,
35 including, without limitation, the place of diversion, place of use,
36 source of supply, time of use, period of use, and the place of storage.

37 (2) A water right or nonconsumptive use that has not been
38 adjudicated may be transferred under this chapter, however neither the

1 board's approval of a transfer, nor the department's approval of the
2 board's action, constitutes an adjudication of the validity, priority,
3 or quantity of the transferor's water right as between the transferor
4 or the transferee and the state, or as between the transferor or the
5 transferee and one or more other water use claimants and such approvals
6 do not preclude or prejudice a subsequent challenge to the validity,
7 priority, or quantity of the right in an adjudication proceeding.

8 NEW SECTION. **Sec. 10.** (1) If an application for transfer is
9 proposed to transfer water from one irrigation district to another,
10 approval of the transfer shall be conditioned upon receipt of
11 concurrence from each of the irrigation districts that the transfer
12 will not adversely affect the ability to deliver water to other
13 landowners or impair the financial integrity of either of the
14 irrigation districts. A transfer involving a change in place or use or
15 a nonconsumptive use by an individual water user or users of water
16 provided by an irrigation district need only receive approval for the
17 change from the board of directors of the irrigation district if the
18 use of water continues within the irrigation district.

19 (2) There is a rebuttable presumption that any water transfer does
20 not impair or injure any existing rights of third parties; however, if
21 any person claims to be the holder of a right impaired by a proposed
22 transfer, that person has the right to a hearing before the governing
23 body of the board. The board shall receive such evidence as it may
24 deem material and necessary to determine the validity of the claim of
25 impairment. If the evidence presented by the party claiming an
26 impairment established that more probably than not, the claimant's
27 water right would be impaired by the proposed transfer, the board may
28 not approve the transfer unless:

29 (a) The applicant and the impaired party agree upon compensation
30 for the impairment; or

31 (b) The applicant proposes a physical solution that substantially
32 mitigates the impairment and is reasonable under the circumstances.

33 (3) Any water transfer that is limited to the consumptive quantity
34 of the transferor or a nonconsumptive use is conclusively presumed to
35 cause no detriment or impairment to existing rights of third parties.
36 The burden is on the applicant to establish that a proposed transfer is
37 limited to the transferor's consumptive quantity.

1 (4) Existing rights include instream flows and nonconsumptive uses
2 for public and private fish propagation established under chapter 90.22
3 RCW or by court decree, as well as other junior and senior rights.

4 NEW SECTION. **Sec. 11.** (1) If a transfer is approved by a board,
5 the board shall submit a copy of the proposed certificate conditionally
6 approving the transfer to the department for review. Along with a copy
7 of the proposed certificate, the board shall submit a report
8 summarizing any factual findings on which the board relied in deciding
9 to approve the proposed transfer. Notice by mail shall be sent to any
10 person who objected to a transfer or who has requested notice.

11 (2) The department may review any proposed transfer approved by a
12 board for compliance with this chapter, guidelines adopted by the
13 department, and other applicable law. The parties to a transfer or any
14 third party whose water right is alleged to be impaired by a transfer
15 may appeal the board's decision to the department. The board shall, at
16 the request of the department or any intervenor, forward to the
17 department the files and records upon which the board based its
18 decision. The department shall review the action of the board and
19 affirm, reverse, or modify the action of the board within thirty days
20 of receipt. The thirty-day time period for department review of a
21 board's action may be extended an additional thirty days by the
22 department, by the consent of the parties to a transfer. If the
23 department fails to act on the matter within the required time, the
24 board's action is final. Upon approval of a water transfer by the
25 action or nonaction of the department, the conditional certificate
26 issued by the board is final and valid.

27 NEW SECTION. **Sec. 12.** The decision of the director or the
28 department to approve or deny a petition to form a board, or to suspend
29 a board's powers and authorities, or to approve or deny a water
30 transfer, by action or nonaction, and any other final agency decision
31 or final action under this chapter is subject to judicial review as
32 provided in chapter 34.05 RCW.

33 NEW SECTION. **Sec. 13.** Sections 1 through 12 of this act
34 constitute a new chapter in Title 90 RCW.

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