
ENGROSSED SUBSTITUTE SENATE BILL 5527

State of Washington

55th Legislature

1997 Regular Session

By Senate Committee on Agriculture & Environment (originally sponsored by Senators McDonald, Rasmussen, Sellar, Fraser and Anderson)

Read first time 02/28/97.

1 AN ACT Relating to incentives for water-efficient irrigation
2 systems; amending RCW 90.03.380; adding a new chapter to Title 90 RCW;
3 and creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that there is a
6 significant number of high-value horticultural crops that can be grown
7 utilizing water-efficient irrigation systems. The legislature finds
8 that over a period of several years, existing orchard plantings will be
9 revitalized and replaced with new plantings, and that additional
10 orchards will be planted which provide opportunities for improved water
11 efficiency.

12 The legislature finds that significant water savings could be
13 realized through the installation of more efficient irrigation systems
14 such as trickle irrigation systems where climatically and economically
15 suitable. The legislature also finds that positive economic
16 incentives, establishment of necessary legal procedures, and removal of
17 legal barriers are needed to stimulate the development of workable
18 technologies and farming systems that rely on lesser quantities of
19 water.

1 The purpose of this act is to stimulate the use of water-efficient
2 irrigation systems by allowing the saved water to be voluntarily
3 transferred by the water right holder to other uses or other places of
4 use. Additionally, the purpose is to establish incentives through
5 enabling self-funded, private capital or public funds to provide
6 improved market-based incentives for adopting water saving technologies
7 and to allow the benefits of the conserved water to be fully realized.
8 It is the intent of this act that sufficient protections be provided to
9 assure that existing water users are not adversely affected by
10 transfers approved under this act.

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

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

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

17 (3) "Net water savings" has the same meaning as defined in RCW
18 90.42.020.

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

21 (5) "Reduction in evaporative loss" means the amount of water that
22 is no longer lost to further use as a result of changing from a
23 conventional irrigation system to a water-efficient irrigation system.
24 "Reduction in evaporative loss" includes the reduction in the amount of
25 water consumed through evaporation or through transpiration by
26 nonproductive plants such as cover crops, but does not include any
27 water that contributed to return flows used to satisfy existing rights.

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

31 (7) "Water-efficient irrigation system" means a system that,
32 through technological modifications, results in water savings.

33 NEW SECTION. **Sec. 3.** A person holding a valid water right or
34 contractual right to use water, who finances the installation of a
35 water-efficient irrigation system, may enter into a contract with
36 another person for the transfer of water saved through installation of
37 the water-efficient irrigation system. In determining the amount that

1 is transferrable, the department shall allow the transfer of an amount
2 equal to the reduction in the evaporative loss. The reduction in
3 evaporative loss is a readily transferrable component of net water
4 savings.

5 In addition, the department shall evaluate whether there are
6 additional net water savings that result directly from installation of
7 the water-efficient irrigation system that could be transferred to the
8 purchaser without detriment to other existing water users. The
9 department may not delay because of decisions on the determination of
10 additional net water savings the approval of the transfer of the water
11 that constitutes the reduction in evaporative loss. The use of water
12 supplied by an irrigation district that is saved through installation
13 of a qualifying water-efficient irrigation system as provided in this
14 section shall be regulated solely as provided by the board of directors
15 of the irrigation district.

16 A person wishing to make application for a transfer of a water
17 right under this chapter shall comply with RCW 90.03.380. A contract
18 may allow for a permanent transfer of a portion of the original water
19 right, or for lease agreements with set expiration dates. The
20 applicant shall state that the contract is not permanent in the
21 application if the contract is not permanent.

22 The transferred portion has the same date of priority as the water
23 right from which it originated, but between them the transferred
24 portion of the right is inferior in priority unless otherwise provided
25 by the parties in the contract.

26 The department shall maintain a record of contracts with the
27 certificate of water right for the transferred water.

28 NEW SECTION. **Sec. 4.** The department may adopt rules, in
29 accordance with chapter 34.05 RCW, for procedures to be used to
30 facilitate the processing of requests for water right transfers made
31 under this chapter and to establish a streamlined procedure to quantify
32 the reduction in the evaporative loss. In developing streamlined
33 procedures, the department may use data from the United States natural
34 resource conservation service or the Washington state cooperative
35 extension service to base calculations of reduction in evaporative loss
36 in various regions of the state.

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

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

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

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

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

27 NEW SECTION. **Sec. 8.** A valid water right user who installs a
28 water-efficient irrigation system may apply for a transfer of the
29 reduction in evaporative loss, plus any additional net water savings,
30 for the irrigation of an additional parcel of previously unirrigated
31 land, to land with less senior water rights, or that lacks a full and
32 sufficient supply. The application must be processed based upon the
33 same criteria as if the transfer were to be made to another person.

1 NEW SECTION. **Sec. 9.** This chapter may be known and cited as the
2 agricultural water conservation incentives act.

3 **Sec. 10.** RCW 90.03.380 and 1996 c 320 s 19 are each amended to
4 read as follows:

5 (1) 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~~
8 ~~said)~~). However, all or a portion of a right may be transferred to
9 another or to others and become appurtenant to any other land or place
10 of use without loss of priority of right theretofore established if
11 such change can be made without detriment or injury to existing rights.
12 The point of diversion of water for beneficial use or the purpose of
13 use may be changed, if such change can be made without detriment or
14 injury to existing rights. Before any transfer of such right to use
15 water or change of the point of diversion of water or change of purpose
16 of use can be made, any person having an interest in the transfer or
17 change, shall file a written application therefor with the department,
18 and said application shall not be granted until notice of said
19 application shall be published as provided in RCW 90.03.280. If it
20 shall appear that such transfer or such change may be made without
21 injury or detriment to existing rights, the department shall issue to
22 the applicant an authorization to make the change or transfer. When
23 the applicant has completed the change or transfer, the department
24 shall issue to the applicant a certificate in duplicate granting the
25 right for such transfer or for such change of point of diversion or of
26 use. The certificate so issued shall be filed and be made a record
27 with the department and the duplicate certificate issued to the
28 applicant may be filed with the county auditor in like manner and with
29 the same effect as provided in the original certificate or permit to
30 divert water.

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

37 (3) A change in place of use by an individual water user or users
38 of water provided by an irrigation district need only receive approval

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

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

19 NEW SECTION. Sec. 11. Sections 2 through 9 of this act constitute
20 a new chapter in Title 90 RCW.

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