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SENATE BILL 5527

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State of Washington

55th Legislature

1997 Regular Session

By Senators McDonald, Rasmussen, Sellar, Fraser and Anderson

Read first time 01/29/97. Referred to Committee on Agriculture & Environment.

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 creating new sections; providing an effective date; and declaring an  
4 emergency.

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

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

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

1 technologies and farming systems that rely on lesser quantities of  
2 water.

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

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

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

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

19 (3) "Net water savings" has the same meaning as defined in RCW  
20 90.42.020.

21 (4) "Person" means a person, corporation, quasi-municipal  
22 corporation, municipal corporation, or state or federal agency.

23 (5) "Reduction in evaporative loss" means the amount of water that  
24 was needed to grow an orchard or other crops using conventional  
25 irrigation systems minus the quantity of water needed to grow the crops  
26 with the use of a water-efficient irrigation system. "Reduction in  
27 evaporative loss" includes the reduction in the amount of water used  
28 through transpiration by nonproductive plants such as cover crops.

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

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

34 NEW SECTION. **Sec. 3.** A person holding a valid water right may  
35 enter into a contract with another person for the transfer of water  
36 saved through installation of a qualifying water-efficient irrigation  
37 system. In determining the amount that is transferrable, the

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

4 In addition, the department shall evaluate whether there are  
5 additional net water savings that could be transferred to the purchaser  
6 without detriment to other existing water users. The department may  
7 not delay because of decisions on the determination of additional net  
8 water savings the approval of the transfer of the water that  
9 constitutes the reduction in evaporative loss.

10 A person wishing to make application for a transfer of a water  
11 right under this chapter shall comply with RCW 90.03.380. A contract  
12 may allow for a permanent transfer of a portion of the original water  
13 right, or for lease agreements with set expiration dates. The  
14 applicant shall state that the contract is not permanent in the  
15 application if the contract is not permanent.

16 The transferred portion has the same date of priority as the water  
17 right from which it originated, but between them the transferred  
18 portion of the right is inferior in priority unless otherwise provided  
19 by the parties in the contract.

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

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

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

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

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

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

11        NEW SECTION.    **Sec. 7.** A holder of a water right may voluntarily  
12 enter into a contract with the department. The department may utilize  
13 funds available from chapter 43.99E RCW to purchase water savings made  
14 available under this chapter. The department shall utilize the same  
15 methods of calculating water that is transferrable to another party  
16 under this chapter in determining the amount of water that is  
17 transferrable to the state. If additional net water saved is available  
18 for the benefit of only a stream segment, the calculations may be made  
19 on a case-by-case basis while assuring no detriment to existing water  
20 users occurs.

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

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

30        **Sec. 10.** RCW 90.03.380 and 1991 c 347 s 15 are each amended to  
31 read as follows:

32        The right to the use of water which has been applied to a  
33 beneficial use in the state shall be and remain appurtenant to the land  
34 or place upon which the same is used(~~(:—PROVIDED, HOWEVER, That~~  
35 ~~said)).~~ However, all or a portion of a right may be transferred to

1 another or to others and become appurtenant to any other land or place  
2 of use without loss of priority of right theretofore established if  
3 such change can be made without detriment or injury to existing rights.  
4 The point of diversion of water for beneficial use or the purpose of  
5 use may be changed, if such change can be made without detriment or  
6 injury to existing rights. Before any transfer of such right to use  
7 water or change of the point of diversion of water or change of purpose  
8 of use can be made, any person having an interest in the transfer or  
9 change, shall file a written application therefor with the department,  
10 and said application shall not be granted until notice of said  
11 application shall be published as provided in RCW 90.03.280. If it  
12 shall appear that such transfer or such change may be made without  
13 injury or detriment to existing rights, the department shall issue to  
14 the applicant a certificate in duplicate granting the right for such  
15 transfer or for such change of point of diversion or of use. The  
16 certificate so issued shall be filed and be made a record with the  
17 department and the duplicate certificate issued to the applicant may be  
18 filed with the county auditor in like manner and with the same effect  
19 as provided in the original certificate or permit to divert water.

20 If an application for change proposes to transfer water rights from  
21 one irrigation district to another, the department shall, before  
22 publication of notice, receive concurrence from each of the irrigation  
23 districts that such transfer or change will not adversely affect the  
24 ability to deliver water to other landowners or impair the financial  
25 integrity of either of the districts.

26 A change in place of use by an individual water user or users of  
27 water provided by an irrigation district need only receive approval for  
28 the change from the board of directors of the district if the use of  
29 water continues within the irrigation district.

30 This section shall not apply to trust water rights acquired by the  
31 state through the funding of water conservation projects under chapter  
32 90.38 RCW or RCW 90.42.010 through 90.42.070.

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

35 NEW SECTION. **Sec. 12.** This act is necessary for the immediate  
36 preservation of the public peace, health, or safety, or support of the

1 state government and its existing public institutions, and takes effect  
2 July 1, 1997.

3 NEW SECTION. **Sec. 13.** If specific funding for the purposes of  
4 this act, referencing this act by bill or chapter number, is not  
5 provided by June 30, 1998, in the omnibus appropriations act, this act  
6 is null and void.

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