

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1272

Chapter 441, Laws of 1997

(partial veto)

55th Legislature
1997 Regular Session

WATER CONSERVANCY BOARDS

EFFECTIVE DATE: 7/27/97

Passed by the House April 19, 1997
Yeas 89 Nays 0

CLYDE BALLARD
**Speaker of the
House of Representatives**

Passed by the Senate April 14, 1997
Yeas 47 Nays 0

BRAD OWEN
President of the Senate

Approved May 20, 1997, with the
exception of sections 8, 10 and 14,
which are vetoed.

GARY LOCKE
Governor of the State of Washington

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1272** as passed by the House of Representatives and the Senate on the dates hereon set forth.

TIMOTHY A. MARTIN
Chief Clerk

FILED

May 20, 1997 - 4:24 p.m.

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1272

Passed Legislature - 1997 Regular Session

AS AMENDED BY THE SENATE

State of Washington 55th Legislature 1997 Regular Session

By House Committee on Agriculture & Ecology (originally sponsored by Representatives Delvin, Chandler, Robertson, McMorris, Honeyford and Mulliken)

Read first time 02/14/97.

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) "Commissioner" means a member of a water conservancy board.
2 (3) "Department" means the department of ecology.
3 (4) "Director" means the director of the department of ecology.

4 NEW SECTION. **Sec. 3.** (1) The county legislative authority of a
5 county may create a water conservancy board, subject to approval by the
6 director, for the purpose of expediting voluntary water transfers
7 within the county.

8 (2) A water conservancy board may be initiated by: (a) A
9 resolution of the county legislative authority; (b) a resolution
10 presented to the county legislative authority calling for the creation
11 of a board by the legislative authority of an irrigation district,
12 public utility district that operates a public water system, a
13 reclamation district, a city operating a public water system, or a
14 water-sewer district that operates a public water system; (c) a
15 resolution by the governing body of a cooperative or mutual corporation
16 that operates a public water system serving one hundred or more
17 accounts; (d) a petition signed by five or more water rights holders,
18 including their addresses, who divert water for use within the county;
19 or (e) any combination of (a) through (d) of this subsection. The
20 resolution or petition must state the need for the board, include
21 proposed bylaws or rules and procedures that will govern the operation
22 of the board, identify the geographic boundaries where there is an
23 initial interest in transacting water sales or transfers, and describe
24 the proposed method for funding the operation of the board.

25 (3) After receiving a resolution or petition to create a board, a
26 county legislative authority shall determine its sufficiency. If the
27 county legislative authority finds that the resolution or petition is
28 sufficient, or if the county is initiating the creation of a board upon
29 its own motion, it shall hold at least one public hearing on the
30 proposed creation of the board. Notice of the hearing shall be
31 published at least once in a newspaper of general circulation in the
32 county not less than ten days nor more than thirty days before the date
33 of the hearing. The notice shall describe the time, date, place, and
34 purpose of the hearing, as well as the purpose of the board. Following
35 the hearing, the county legislative authority may adopt a resolution
36 approving the creation of the board if it finds that the board's
37 creation is in the public interest.

1 NEW SECTION. **Sec. 4.** (1) The county legislative authority shall
2 forward a copy of the resolution or petition calling for the creation
3 of the board, a copy of the resolution approving the creation of the
4 board, and a summary of the public testimony presented at the public
5 hearing to the director following the adoption of the resolution
6 calling for the board's creation.

7 (2) The director shall approve or deny the creation of a board
8 within forty-five days after the county legislative authority has
9 submitted all information required under subsection (1) of this
10 section. The director must determine whether the creation of the board
11 would further the purposes of this chapter and is in the public
12 interest. The director shall include a description of the necessary
13 training requirements for commissioners in the notice of approval sent
14 to the county legislative authority.

15 NEW SECTION. **Sec. 5.** The director of the department may, as
16 deemed necessary by the director, adopt rules in accordance with
17 chapter 34.05 RCW necessary to carry out this chapter, including
18 minimum requirements for the training and continuing education of
19 commissioners. Training courses for commissioners shall include an
20 overview of state water law and hydrology. Prior to commissioners
21 taking action on proposed water right transfers, the commissioners
22 shall comply with training requirements that include state water law
23 and hydrology.

24 NEW SECTION. **Sec. 6.** A water conservancy board constitutes a
25 public body corporate and politic and a separate unit of local
26 government in the state. Each board shall consist of three
27 commissioners appointed by the county legislative authority for six-
28 year terms. The county legislative authority shall stagger the initial
29 appointment of commissioners so that the first commissioners who are
30 appointed shall serve terms of two, four, and six years, respectively,
31 from the date of their appointment. All vacancies shall be filled for
32 the unexpired term. The county legislative authority shall consider,
33 but is not limited in appointing, nominations to the board by people or
34 entities petitioning or requesting the creation of the board. However,
35 the county legislative authority shall ensure that individual water
36 right holders who divert water for use within the county are
37 represented on the board. In making appointments to the board, the

1 county legislative authority shall choose from among persons who are
2 residents of the county or a county that is contiguous to the county
3 that the water conservancy board is to serve. No commissioner may
4 participate in board decisions until he or she has successfully
5 completed the necessary training required under section 5 of this act.
6 Commissioners shall serve without compensation, but are entitled to
7 reimbursement for necessary travel expenses in accordance with RCW
8 43.03.050 and 43.03.060 and costs incident to training.

9 NEW SECTION. **Sec. 7.** (1) A water conservancy board may acquire,
10 purchase, hold, lease, manage, occupy, and sell real and personal
11 property or any interest therein, enter into and perform all necessary
12 contracts, appoint and employ necessary agents and employees and fix
13 their compensation, employ contractors including contracts for
14 professional services, sue and be sued, and do any and all lawful acts
15 required and expedient to carry out the purposes of this chapter.

16 (2) A board constitutes an independently funded entity, and may
17 provide for its own funding as determined by the commissioners. The
18 board may accept grants and may adopt fees for processing applications
19 for transfers of water rights to fund the activities of the board. A
20 board may not impose taxes or acquire property by the exercise of
21 eminent domain.

22 *NEW SECTION. **Sec. 8.** *A board shall operate on a county-wide*
23 *basis, and shall have the following powers, in addition to any others*
24 *granted in this chapter:*

25 (1) *A board may establish a water transfer exchange through which*
26 *all or part of the water that any person is entitled to use by reason*
27 *of owning or holding a water right may be listed for sale or transfer.*
28 *The board may approve water transfers involving a change in place of*
29 *use, point of diversion or withdrawal, purpose of use, time of use,*
30 *source of supply, quantity of use permitted, and the place of storage.*
31 *Any water transfer approved by the board is subject to final approval*
32 *by the director pursuant to section 11 of this act.*

33 (2) *The board may approve the transfer of a water right or a water*
34 *right claim filed under chapter 90.14 RCW that has not been*
35 *adjudicated. The board shall make a tentative determination as to the*
36 *validity and extent of the existing right, and may only approve*
37 *transfers of those rights to the extent they are deemed valid by the*

1 *board. Neither the board's approval of a transfer, nor the director's*
2 *approval of the board's action constitutes an adjudication of the*
3 *validity, priority, or quantity of the transferor's water right as*
4 *between the transferor or the transferee and the state, or as between*
5 *the transferor or the transferee and one or more water use claimants,*
6 *and such approvals do not preclude or prejudice a subsequent challenge*
7 *to the validity, priority, or quantity of the right in an adjudicatory*
8 *proceeding. The tentative determination of a water right by a board*
9 *does not preclude a different conclusion in a subsequent adjudication.*

10 (3) *Water transfers approved by the board must remain within an*
11 *existing category of beneficial use, and a transfer of water that is*
12 *being used for agricultural applications is restricted to short-term or*
13 *long-term leases.*

14 (4) *Each board shall maintain and publish all information made*
15 *available to it concerning water rights listed with the board and any*
16 *application to the board for approval of a water transfer. Each board*
17 *shall establish policies and procedures, consistent with applicable*
18 *law, for the administration of a system of timely local approvals for*
19 *water transfers under this chapter. The administration shall be*
20 *performed exclusively by the board, but the department may provide*
21 *technical assistance to the board.*

22 *Sec. 8 was vetoed. See message at end of chapter.

23 NEW SECTION. **Sec. 9.** (1) *Applications to the board for transfers*
24 *shall be made on a form provided by the department, and shall contain*
25 *such additional information as may be required by the board in order to*
26 *review and act upon the application. At a minimum, the application*
27 *shall include information sufficient to establish to the board's*
28 *satisfaction of the transferor's right to the quantity of water being*
29 *transferred, and a description of any applicable limitations on the*
30 *right to use water, including the point of diversion or withdrawal,*
31 *place of use, source of supply, purpose of use, quantity of use*
32 *permitted, time of use, period of use, and the place of storage.*

33 (2) *The transferor and the transferee of any proposed water*
34 *transfer may apply to a board for approval of the transfer if the water*
35 *proposed to be transferred is currently diverted or used within the*
36 *geographic boundaries of the county, or would be diverted or used*
37 *within the geographic boundaries of the county if the transfer is*
38 *approved. In the case of a proposed water transfer in which the water*

1 is currently diverted or would be diverted outside the geographic
2 boundaries of the county, the board shall hold a public hearing in the
3 county of the diversion or proposed diversion. The board shall provide
4 for prominent publication of notice of such hearing in a newspaper of
5 general circulation published in the county in which the hearing is to
6 be held for the purpose of affording an opportunity for interested
7 persons to comment upon the application.

8 (3) After an application for a transfer is filed with the board,
9 the board shall publish notice of the application in accordance with
10 the publication requirements and send notice to state agencies as
11 provided in RCW 90.03.280. Any person may submit comments to the board
12 regarding the application. Any water right holder claiming detriment
13 or injury to an existing water right may intervene in the application
14 before the board pursuant to subsection (4) of this section. If a
15 majority of the board determines that the application is complete, in
16 accordance with the law and the transfer can be made without injury or
17 detriment to existing water rights in accordance with RCW 90.03.380,
18 the board shall issue the applicant a certificate conditionally
19 approving the transfer, subject to review by the director.

20 (4) If a water right holder claims a proposed transfer will cause
21 an impairment to that right, the water right holder is entitled to a
22 hearing before the board. The board shall receive such evidence as it
23 deems material and necessary to determine the validity of the claim of
24 impairment. If the party claiming the impairment establishes by a
25 preponderance of the evidence that his or her water right will be
26 impaired by the proposed transfer, the board may not approve the
27 transfer unless the applicant and the impaired party agree upon
28 compensation for the impairment.

29 ****NEW SECTION. Sec. 10. (1) If an application for a transfer is***
30 ***proposed to transfer water from one irrigation district to another,***
31 ***approval of the transfer shall be conditioned upon receipt of the***
32 ***concurrence from each of the irrigation districts that the transfer***
33 ***will not adversely affect the ability to deliver water to other***
34 ***landowners or impair the financial integrity of either of the***
35 ***districts.***

36 (2) A transfer involving a change in place or use or a
37 nonconsumptive use by an individual water user or users of water
38 provided by an irrigation district need only receive the approval for

1 *the transfer from the board of directors of the irrigation district if*
2 *the water continues within the irrigation district.*

3 *Sec. 10 was vetoed. See message at end of chapter.

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

11 (2) The director shall review each proposed transfer conditionally
12 approved by a board for compliance with state water transfer laws
13 including RCW 90.03.380, 90.03.390, and 90.44.100, rules and guidelines
14 adopted by the department, and other applicable law.

15 (3) Any party to a transfer or a third party who alleges his or her
16 water right will be impaired by the proposed transfer may file
17 objections with the department. If objections to the transfer are
18 filed with the department, the board shall forward the files and
19 records upon which it based its decision to the department.

20 (4) The director shall review the action of the board and affirm,
21 reverse, or modify the action of the board within forty-five days of
22 receipt. The forty-five day time period may be extended for an
23 additional thirty days by the director, upon the consent of the parties
24 to the transfer. If the director fails to act within this time period,
25 the board's action is final. Upon approval of a water transfer by the
26 action or nonaction of the director, the conditional certificate issued
27 by the board is final and valid.

28 NEW SECTION. **Sec. 12.** The decision of the director to approve an
29 action to create a board, or to approve, deny, or modify a water
30 transfer either by action or nonaction shall be appealable in the same
31 manner as other water right decisions made pursuant to chapter 90.03
32 RCW.

33 NEW SECTION. **Sec. 13.** Neither the county nor the department shall
34 be subject to any cause of action or claim for damages arising out of
35 transfers approved by a board under this chapter.

1 ***NEW SECTION.** *Sec. 14. A person who, in good faith and without*
2 *intent of circumventing water right relinquishment statutes, leases a*
3 *water right under this chapter may not lose any portion of that water*
4 *right by relinquishment due to the nonuse of the water by the lessee.*
5 *Sec. 14 was vetoed. See message at end of chapter.

6 **NEW SECTION.** **Sec. 15.** Nothing in this chapter eliminates or
7 lessens the requirements necessary for the approval of interties.

8 **NEW SECTION.** **Sec. 16.** (1) A commissioner of a water conservancy
9 board who has an ownership interest in a water right subject to an
10 application for approval of a transfer or change by the board, shall
11 not participate in the board's review or decision upon the application.

12 (2) A commissioner of a water conservancy board who also serves as
13 an employee or upon the governing body of a municipally owned water
14 system, shall not participate in the board's review or decision upon an
15 application for the transfer or change of a water right in which that
16 water system has or is proposed to have an ownership interest.

17 **NEW SECTION.** **Sec. 17.** Water conservancy board activities are
18 subject to the open public meetings act, chapter 42.30 RCW.

19 **NEW SECTION.** **Sec. 18.** Nothing in this chapter affects transfers
20 that may be otherwise approved under chapter 90.03 RCW.

21 **NEW SECTION.** **Sec. 19.** The department shall report biennially by
22 December 31st of each even-numbered year to the appropriate committees
23 of the legislature on the boards formed or sought to be formed under
24 the authority of this chapter, the transfer applications reviewed and
25 other activities conducted by the boards, and the funding of such
26 boards.

27 **NEW SECTION.** **Sec. 20.** If any provision of this act or its
28 application to any person or circumstance is held invalid, the
29 remainder of the act or the application of the provision to other
30 persons or circumstances is not affected.

31 **NEW SECTION.** **Sec. 21.** Sections 1 through 19 of this act
32 constitute a new chapter in Title 90 RCW.

Passed the House April 19, 1997.
Passed the Senate April 14, 1997.
Approved by the Governor May 20, 1997, with the exception of
certain items that were vetoed.
Filed in Office of Secretary of State May 20, 1997.

1 Note: Governor's explanation of partial veto is as follows:

2 "I am returning herewith, without my approval sections 8, 10, and
3 14 of Substitute House Bill No. 1272 entitled:

4 "AN ACT Relating to water transfers;"

5 I have approved most sections of Substitute House Bill No. 1272
6 because it provides new ways to better use our existing water supplies.
7 A water conservancy board will provide a county-wide mechanism for
8 changing and exchanging water rights.

9 The Legislature authorized the Department of Ecology to adopt rules
10 necessary to carry out this newly created chapter in the water code,
11 including minimum requirements for the training and continuing
12 education of board commissioners. This will be crucial for effective
13 utilization of this new tool, and necessary before the Department can
14 accept and approve the creation of any water conservancy board.
15 Accordingly, I direct the Department of Ecology to initiate rule-making
16 as soon as possible.

17 Subsections (1) and (3) of section 8 contain conflicting directions
18 to a water conservancy board relating to its authority in approving
19 water transfers.

20 Section 10 of SHB 1272 conflicts with RCW 90.03.380, which it was
21 intended to mirror, and would likely create confusion in interpretation
22 of the statutes and disagreement in the management of the resource.

23 Section 14 establishes a subjective standard for protection against
24 relinquishment, requiring the Department of Ecology to prove that a
25 person intended to circumvent the relinquishment statute in order to
26 relinquish a leased water right. Because it is particularly difficult
27 to prove a person's intent in this context, section 14 could lead to
28 questionable leases to preserve unused water rights from relinquishment
29 for non-use.

30 For these reasons, I have vetoed sections 8, 10, and 14 of
31 Substitute House Bill No. 1272.

32 With the exception of sections 8, 10, and 14, Substitute House Bill
33 No. 1272 is approved."