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HOUSE BILL 1222

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State of Washington

57th Legislature

2001 Regular Session

By Representatives Delvin, G. Chandler, Armstrong, B. Chandler, Grant, Dunshee, Sump, Schoesler, Clements, Mastin and McMorris

Read first time 01/22/2001. Referred to Committee on Agriculture & Ecology.

1 AN ACT Relating to water conservancy boards; amending RCW  
2 90.80.010, 90.80.070, 90.80.080, 90.80.100, 90.80.120, and  
3 90.80.140; and adding a new section to chapter 90.80 RCW.

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

5 **Sec. 1.** RCW 90.80.010 and 1997 c 441 s 2 are each amended to read  
6 as follows:

7 The following definitions apply throughout this chapter, unless  
8 the context clearly requires otherwise.

9 (1) "Board" means a water conservancy board created under this  
10 chapter.

11 (2) "Commissioner" means a member of a water conservancy board.

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

13 (4) "Director" means the director of the department of ecology.

14 (5) "Transfer" means a transfer, change, or amendment to a  
15 water right referred to in RCW 90.03.380, 90.03.390, or 90.44.100.

16 **Sec. 2.** RCW 90.80.070 and 1997 c 441 s 9 are each amended to read  
17 as follows:

18 (1) Applications to the board for transfers shall be made on a

1 form provided by the department, and shall contain such additional  
2 information as may be required by the board in order to review and  
3 act upon the application. At a minimum, the application shall  
4 include information sufficient to establish to the board's  
5 satisfaction of the transferor's right to the quantity of water  
6 being transferred, and a description of any applicable limitations  
7 on the right to use water, including the point of diversion or  
8 withdrawal, place of use, source of supply, purpose of use,  
9 quantity of use permitted, time of use, period of use, and the  
10 place of storage.

11 (2) The transferor and the transferee of any proposed water  
12 transfer may apply to a board for approval of the transfer if the  
13 water proposed to be transferred is currently diverted, withdrawn,  
14 or used within the geographic boundaries of the county, or would  
15 be diverted, withdrawn, or used within the geographic boundaries  
16 of the county if the transfer is approved. In the case of a  
17 proposed water transfer in which the water is currently diverted  
18 or would be diverted outside the geographic boundaries of the  
19 county, the board shall hold a public hearing in the county of the  
20 diversion or proposed diversion. The board shall provide for  
21 prominent publication of notice of such hearing in a newspaper of  
22 general circulation published in the county in which the hearing  
23 is to be held for the purpose of affording an opportunity for  
24 interested persons to comment upon the application.

25 (3) After an application for a transfer is filed with the  
26 board, the board shall publish notice of the application in  
27 accordance with the publication requirements and send notice to  
28 state agencies as provided in RCW 90.03.280. Any person may  
29 submit comments to the board regarding the application. Any water  
30 right holder claiming detriment or injury to an existing water  
31 right may intervene in the application before the board pursuant  
32 to subsection (4) of this section. If a majority of the board  
33 determines that the application is complete, in accordance with  
34 the law and the transfer can be made without injury or detriment  
35 to existing water rights in accordance with RCW 90.03.380,  
36 90.03.390, or 90.44.100, the board shall issue the applicant a  
37 certificate conditionally approving the transfer, subject to  
38 review by the director.

1 (4) If a water right holder claims a proposed transfer will  
2 cause an impairment to that right, the water right holder is  
3 entitled to a hearing before the board. The board shall receive  
4 such evidence as it deems material and necessary to determine the  
5 validity of the claim of impairment. If the party claiming the  
6 impairment establishes by a preponderance of the evidence that his  
7 or her water right will be impaired by the proposed transfer, the  
8 board may not approve the transfer unless the applicant and the  
9 impaired party agree upon compensation for the impairment.

10 **Sec. 3.** RCW 90.80.080 and 1997 c 441 s 11 are each amended to  
11 read as follows:

12 (1) If an application for a transfer is approved by the board,  
13 the board shall submit a copy of the proposed certificate  
14 conditionally approving the transfer to the department for  
15 review. The board shall also submit a report summarizing any  
16 factual findings on which the board relied in deciding to approve  
17 the proposed transfer. The board shall also transmit notice of  
18 the board's decision by mail to any person who objected to the  
19 transfer or who requested notice.

20 If an application for a transfer is denied by the board, the  
21 board shall submit a copy of a record of its decision denying the  
22 transfer to the department for review. The board shall also  
23 submit a report summarizing any factual findings on which the  
24 board relied in deciding to deny the proposed transfer. The board  
25 shall also transmit notice of the board's decision by mail to any  
26 person who objected to the transfer or who requested notice.

27 (2) The director shall review each proposed transfer  
28 conditionally approved by a board and each decision by a board  
29 denying an application for such a transfer for compliance or  
30 noncompliance with state water transfer laws including RCW  
31 90.03.380, 90.03.390, and 90.44.100, rules and guidelines adopted  
32 by the department, and other applicable law.

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

1 (4) The director shall review the action of the board and  
2 affirm, reverse, or modify the action of the board within forty-  
3 five days of receipt. The forty-five day time period may be  
4 extended for an additional thirty days by the director, upon the  
5 consent of the parties to the transfer. If the director fails to  
6 act within this time period, the board's action is final. Upon  
7 approval of a water transfer by the action or nonaction of the  
8 director, the conditional certificate issued by the board is final  
9 and valid.

10 NEW SECTION. **Sec. 4.** A new section is added to chapter 90.80  
11 RCW to read as follows:

12 No action may be brought or maintained against a commissioner,  
13 agent, or employee of a water conservancy board for any  
14 noncontractual acts or omissions of the water conservancy board or  
15 its commissioners, agents, or employees which are related to water  
16 transfers under this chapter.

17 **Sec. 5.** RCW 90.80.100 and 1997 c 441 s 13 are each amended to read  
18 as follows:

19 ~~((Neither))~~ The county ((~~nor~~)), the water conservancy board,  
20 and the department shall not be subject jointly or severally to  
21 any cause of action or claim for damages arising out of transfers  
22 approved or denied by a board under this chapter.

23 **Sec. 6.** RCW 90.80.120 and 1997 c 441 s 16 are each amended to read  
24 as follows:

25 (1) A commissioner of a water conservancy board who has an  
26 ownership interest in a water right subject to an application for  
27 approval of a transfer ~~((~~or change~~))~~ by the board, shall not  
28 participate in the board's review or decision upon the  
29 application.

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

1       **Sec. 7.** RCW 90.80.140 and 1997 c 441 s 18 are each amended to read  
2 as follows:  
3       Nothing in this chapter affects transfers that may be otherwise  
4 approved under chapter 90.03 or 90.44 RCW.

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