
HOUSE BILL 1877

State of Washington

57th Legislature

2001 Regular Session

By Representatives G. Chandler and Linville

Read first time 02/07/2001. Referred to Committee on Agriculture & Ecology.

1 AN ACT Relating to modifications of water rights; amending RCW
2 90.03.380, 90.80.010, 90.80.070, 90.80.080, 90.80.100, 90.80.120,
3 90.80.140, 90.66.040, and 90.66.060; adding a new section to
4 chapter 90.80 RCW; adding a new section to chapter 90.66 RCW;
5 creating new sections; and declaring an emergency.

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

7 NEW SECTION. **Sec. 1.** The legislature hereby establishes a pilot
8 project for purposes of evaluating means of reducing the current
9 backlog of applications for changes, transfers, or amendments of
10 existing water rights. For the purposes of this pilot project, the
11 legislature intends to allow the processing of applications for
12 such changes, transfers, or amendments without regard to possible
13 impairment of pending applications for new water rights in
14 specific watersheds. While the legislature intends to assist the
15 processing of such changes, transfers, and amendments, it does not
16 intend to divert the department of ecology's efforts or in any
17 other way deter the processing of applications for new water
18 rights.

1 This section is null and void if any one of sections 4 through
2 10 of this act is vetoed by June 30, 2001.

3 **Sec. 2.** RCW 90.03.380 and 1997 c 442 s 801 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
7 land or place upon which the same is used: PROVIDED, HOWEVER, That
8 the right may be transferred to another or to others and become
9 appurtenant to any other land or place of use without loss of
10 priority of right theretofore established if such change can be
11 made without detriment or injury to existing rights. The point of
12 diversion of water for beneficial use or the purpose of use may be
13 changed, if such change can be made without detriment or injury to
14 existing rights.

15 (a) A change in the place of use, point of diversion, and/or
16 purpose of use of a water right to enable irrigation of additional
17 acreage or the addition of new uses may be permitted if such
18 change results in no increase in the annual consumptive quantity
19 of water used under the water right. For purposes of this section,
20 "annual consumptive quantity" means the estimated or actual annual
21 amount of water diverted pursuant to the water right, reduced by
22 the estimated annual amount of return flows, averaged over the
23 most recent five-year period of continuous beneficial use of the
24 water right.

25 (b) Before any transfer of such right to use water or change of
26 the point of diversion of water or change of purpose of use can be
27 made, any person having an interest in the transfer or change,
28 shall file a written application therefor with the department, and
29 the application shall not be granted until notice of the
30 application is published as provided in RCW 90.03.280. If it shall
31 appear that such transfer or such change may be made without
32 injury or detriment to existing rights, the department shall issue
33 to the applicant a certificate in duplicate granting the right for
34 such transfer or for such change of point of diversion or of use.
35 The certificate so issued shall be filed and be made a record with
36 the department and the duplicate certificate issued to the

1 applicant may be filed with the county auditor in like manner and
2 with the same effect as provided in the original certificate or
3 permit to divert water.

4 (2) If an application for change proposes to transfer water
5 rights from one irrigation district to another, the department
6 shall, before publication of notice, receive concurrence from each
7 of the irrigation districts that such transfer or change will not
8 adversely affect the ability to deliver water to other landowners
9 or impair the financial integrity of either of the districts.

10 (3) A change in place of use by an individual water user or
11 users of water provided by an irrigation district need only
12 receive approval for the change from the board of directors of the
13 district if the use of water continues within the irrigation
14 district, and when water is provided by an irrigation entity that
15 is a member of a board of joint control created under chapter
16 87.80 RCW, approval need only be received from the board of joint
17 control if the use of water continues within the area of
18 jurisdiction of the joint board and the change can be made without
19 detriment or injury to existing rights.

20 (4) This section shall not apply to trust water rights acquired
21 by the state through the funding of water conservation projects
22 under chapter 90.38 RCW or RCW 90.42.010 through
23 90.42.070. Subsection (1)(a) of this section does not apply to and
24 shall not be construed as providing any limitation to the
25 transfers, changes, or amendments of water rights established
26 under the authority of a family farm permit that are authorized
27 under section 11 of this act.

28 (5) Pending applications for new water rights are not entitled
29 to protection from impairment, injury, or detriment when an
30 application for a change, transfer, or amendment of an existing
31 surface or ground water right is considered.

32 (6) Applications relating to existing surface or ground water
33 rights may be processed and decisions on them rendered
34 independently of processing and rendering decisions on pending
35 applications for new water rights within the same source of supply
36 without regard to the date of filing of the pending applications
37 for new water rights.

38 (7) An application may be processed ahead of a previously filed

1 application, when sufficient information for a decision on the
2 previously filed application is not available and the applicant
3 for the previously filed application is sent written notice that
4 explains what information is not available and why and informs the
5 applicant that processing of the next application in order of
6 filing will begin. No such previously filed application shall lose
7 its priority date. This subsection does not affect any other
8 existing authority to process applications.

9 (8) No applicant for a change, transfer, or amendment of a
10 surface or ground water right may be required to give up any part
11 of the applicant's valid water right or claim to a state agency,
12 the trust water rights program, or to other persons, as a
13 condition of processing or approving the application.

14 (9) As used in this section, "WRIA" means a water resource
15 inventory area established in chapter 173-500 WAC as it existed on
16 January 1, 2001.

17 (10) Subsections (5) through (12) of this section provide the
18 pilot project referred to in section 1 of this act and apply only
19 in WRIA's 1, 6, 13, 23, 32, 37, 39, 47, and 48 and in the ground
20 water management subarea described in chapter 173-128A WAC.

21 (11) Beginning January 1, 2002, the department shall report to
22 the legislature by January 1st and by June 30th of each year on
23 the results to date of the pilot project.

24 (12) Subsections (5) through (12) of this section are in effect
25 beginning the effective date of this section through June 30,
26 2004.

27 (13) The 2001 amendments to this section are null and void if
28 any one of sections 4 through 10 of this act is vetoed by June 30,
29 2001.

30 NEW SECTION. Sec. 3. The expiration of the pilot project
31 authorized by section 2 (5) through (11) of this act shall not
32 affect any right acquired or liability or obligation incurred or
33 any rule or order adopted or decision made under section 2 (5)
34 through (11) of this act nor shall it affect any proceeding
35 instituted under or with regard to section 2 (5) through (11) of
36 this act.

1 This section is null and void if any one of sections 4 through
2 10 of this act is vetoed by June 30, 2001.

3 **Sec. 4.** RCW 90.80.010 and 1997 c 441 s 2 are each amended to read
4 as follows:

5 The following definitions apply throughout this chapter, unless
6 the context clearly requires otherwise.

7 (1) "Board" means a water conservancy board created under this
8 chapter.

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

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

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

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

14 **Sec. 5.** RCW 90.80.070 and 1997 c 441 s 9 are each amended to read
15 as follows:

16 (1) Applications to the board for transfers shall be made on a
17 form provided by the department, and shall contain such additional
18 information as may be required by the board in order to review and
19 act upon the application. At a minimum, the application shall
20 include information sufficient to establish to the board's
21 satisfaction of the transferor's right to the quantity of water
22 being transferred, and a description of any applicable limitations
23 on the right to use water, including the point of diversion or
24 withdrawal, place of use, source of supply, purpose of use,
25 quantity of use permitted, time of use, period of use, and the
26 place of storage.

27 (2) The transferor and the transferee of any proposed water
28 transfer may apply to a board for approval of the transfer if the
29 water proposed to be transferred is currently diverted, withdrawn,
30 or used within the geographic boundaries of the county, or would
31 be diverted, withdrawn, or used within the geographic boundaries
32 of the county if the transfer is approved. In the case of a
33 proposed water transfer in which the water is currently diverted
34 or would be diverted outside the geographic boundaries of the
35 county, the board shall hold a public hearing in the county of the
36 diversion or proposed diversion. The board shall provide for

1 prominent publication of notice of such hearing in a newspaper of
2 general circulation published in the county in which the hearing
3 is to be held for the purpose of affording an opportunity for
4 interested persons to comment upon the application.

5 (3) After an application for a transfer is filed with the
6 board, the board shall publish notice of the application in
7 accordance with the publication requirements and send notice to
8 state agencies as provided in RCW 90.03.280. Any person may submit
9 comments to the board regarding the application. Any water right
10 holder claiming detriment or injury to an existing water right may
11 intervene in the application before the board pursuant to
12 subsection (4) of this section. If a majority of the board
13 determines that the application is complete, in accordance with
14 the law and the transfer can be made without injury or detriment
15 to existing water rights in accordance with RCW 90.03.380,
16 90.03.390, or 90.44.100, the board shall issue the applicant a
17 certificate conditionally approving the transfer, subject to
18 review by the director.

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

28 **Sec. 6.** RCW 90.80.080 and 1997 c 441 s 11 are each amended to
29 read as follows:

30 (1) If an application for a transfer is approved by the board,
31 the board shall submit a copy of the proposed certificate
32 conditionally approving the transfer to the department for
33 review. The board shall also submit a report summarizing any
34 factual findings on which the board relied in deciding to approve
35 the proposed transfer. The board shall also transmit notice of the
36 board's decision by mail to any person who objected to the
37 transfer or who requested notice.

1 If an application for a transfer is denied by the board, the
2 board shall submit a copy of a record of its decision denying the
3 transfer to the department for review. The board shall also submit
4 a report summarizing any factual findings on which the board
5 relied in deciding to deny the proposed transfer. The board shall
6 also transmit notice of the board's decision by mail to any person
7 who objected to the transfer or who requested notice.

8 (2) The director shall review each proposed transfer
9 conditionally approved by a board and each decision by a board
10 denying an application for such a transfer for compliance or
11 noncompliance with state water transfer laws including RCW
12 90.03.380, 90.03.390, and 90.44.100, rules and guidelines adopted
13 by the department, and other applicable law.

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

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

28 NEW SECTION. Sec. 7. A new section is added to chapter 90.80
29 RCW to read as follows:

30 No action may be brought or maintained against a commissioner,
31 agent, or employee of a water conservancy board for any
32 noncontractual acts or omissions of the water conservancy board or
33 its commissioners, agents, or employees which are related to water
34 transfers under this chapter.

35 **Sec. 8.** RCW 90.80.100 and 1997 c 441 s 13 are each amended to read
36 as follows:

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

5

6 **Sec. 9.** RCW 90.80.120 and 1997 c 441 s 16 are each amended to read
7 as follows:

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

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

19 **Sec. 10.** RCW 90.80.140 and 1997 c 441 s 18 are each amended to
20 read as follows:

21 Nothing in this chapter affects transfers that may be otherwise
22 approved under chapter 90.03 or 90.44 RCW.

23 NEW SECTION. **Sec. 11.** A new section is added to chapter 90.66
24 RCW to read as follows:

25 (1) Transfers of water rights established under the authority
26 of family farm permits may be approved as authorized under this
27 section and under RCW 90.03.380, 90.03.390, or 90.44.100 as
28 appropriate.

29 (2) A water right established under the authority of a family
30 farm permit may be transferred:

31 (a) For use for agricultural irrigation purposes as limited by
32 RCW 90.66.060 (1) and (2) except as provided in RCW 90.66.060(3);

33 (b) To any purpose of use that is a beneficial use of water if
34 the transfer is made exclusively under a lease agreement, except
35 that transfers for the use of water for agricultural irrigation

1 purposes shall be limited as provided by RCW 90.66.060 (1) and
2 (2);

3 (c) To any purpose of use that is a beneficial use of water if
4 the water right is for the use of water at a location that is,
5 immediately before the transfer is approved, within the boundaries
6 of a city or town or within the boundaries of an urban growth area
7 designated under chapter 36.70A RCW, except that transfers for the
8 use of water for agricultural irrigation purposes shall be limited
9 as provided by RCW 90.66.060 (1) and (2).

10 (3) If a portion of the water governed by a water right
11 established under the authority of a family farm permit is made
12 surplus to the beneficial uses exercised under the right through
13 the implementation of practices or technologies, including but not
14 limited to conveyance practices or technologies, which are more
15 efficient or more water-use efficient than those under which the
16 right was perfected, the right to use the surplus water may be
17 transferred to any purpose of use that is a beneficial use of
18 water. Nothing in this subsection authorizes: A transfer of the
19 portion of a water right that is necessary for the production of
20 crops historically grown under the right; or a transfer of a water
21 right or a portion of a water right that has not been perfected
22 through beneficial use before the transfer.

23 (4) The authority granted by this section to transfer or alter
24 the purpose of use of a water right established under the
25 authority of a family farm permit shall not be construed as
26 limiting in any manner the authority granted by RCW 90.03.380,
27 90.03.390, or 90.44.100 to alter other elements of such a water
28 right.

29 **Sec. 12.** RCW 90.66.040 and 1979 c 3 s 4 are each amended to read as
30 follows:

31 For the purposes of this chapter, the following definitions
32 shall be applicable:

33 (1) "Family farm" means a geographic area including not more
34 than two thousand acres of irrigated agricultural lands, whether
35 contiguous or noncontiguous, the controlling interest in which is
36 held by a person having a controlling interest in no more than two

1 thousand acres of irrigated agricultural lands in the state of
2 Washington which are irrigated under rights acquired after
3 December 8, 1977.

4 (2) "Person" means any individual, corporation, partnership,
5 limited partnership, organization, or other entity whatsoever,
6 whether public or private. The term "person" shall include as one
7 person all corporate or partnership entities with a common
8 ownership of more than one-half of the assets of each of any
9 number of such entities.

10 (3) "Controlling interest" means a property interest that can
11 be transferred to another person, the percentage interest so
12 transferred being sufficient to effect a change in control of the
13 landlord's rights and benefits. Ownership of property held in trust
14 shall not be deemed a controlling interest where no part of the
15 trust has been established through expenditure or assignment of
16 assets of the beneficiary of the trust and where the rights of the
17 family farm permit which is a part of the trust cannot be
18 transferred to another by the beneficiary of the trust under terms
19 of the trust. Each trust of a separate donor origin shall be
20 treated as a separate entity and the administration of property
21 under trust shall not represent a controlling interest on the part
22 of the trust officer.

23 (4) "Department" means the department of ecology of the state
24 of Washington.

25 (5) "Application", "permit" and "public waters" shall have the
26 meanings attributed to these terms in chapters 90.03 and 90.44
27 RCW.

28 (6) "Public water entity" means any public or governmental
29 entity with authority to administer and operate a system to supply
30 water for irrigation of agricultural lands.

31 (7) "Transfer" means a transfer, change, or amendment to a
32 water right referred to in RCW 90.03.380, 90.03.390, or 90.44.100.

33 (8) "Withdraw" means to withdraw ground water or to divert
34 surface water.

35 **Sec. 13.** RCW 90.66.060 and 1979 c 3 s 6 are each amended to read as
36 follows:

37 (1) Except as provided in subsections (2) and (3) of this

1 section, the right to withdraw water for use for the irrigation of
2 agricultural lands under authority of a family farm permit shall
3 have no time limit (~~but~~) and shall be conditioned upon the land
4 being irrigated complying with the definition of a family farm as
5 defined at the time the permit is issued(~~PROVIDED, HOWEVER,~~
6 That)).

7 (2) If the acquisition by any person of land and water rights
8 by gift, devise, bequest, or by way of bona fide satisfaction of a
9 debt, would otherwise cause land being irrigated pursuant to a
10 family farm permit to lose its status as a family farm, such
11 acquisition shall be deemed to have no effect upon the status of
12 family farm water permits pertaining to land held or acquired by
13 the person acquiring such land and water rights if all lands held
14 or acquired are again in compliance with the definition of a
15 family farm within five years from the date of such acquisition.

16 ((+2)) If the department determines that water is being
17 withdrawn under a family farm permit for use on land not in
18 conformity with the definition of a family farm, the department
19 shall notify the holder of such family farm permit by personal
20 service of such fact and the permit shall be suspended two years
21 from the date of receipt of notice unless the person having a
22 controlling interest in said land satisfies the department that
23 such land is again in conformity with the definition of a family
24 farm. The department may, upon a showing of good cause and
25 reasonable effort to attain compliance on the part of the person
26 having the controlling interest in such land, extend the two year
27 period prior to suspension. If conformity is not achieved prior to
28 five years from the date of notice the rights of withdrawal shall
29 be canceled.

30 (3) This section does not apply in any manner whatsoever to a
31 transfer of surplus water authorized by section 11(3) of this act;
32 however, this section does apply to other transfers of a water
33 right established under the authority of a family farm permit to
34 the extent that the transfer is to a use of water for agricultural
35 irrigation purposes.

36 NEW SECTION. Sec. 14. Sections 1 through 3 of this act are

1 necessary for the immediate preservation of the public peace,
2 health, or safety, or support of the state government and its
3 existing public institutions, and take effect immediately.

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