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**SENATE BILL 6301**

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**State of Washington 66th Legislature 2020 Regular Session**

**By** Senators Van De Wege, Warnick, Salomon, Lovelett, Carlyle, Walsh, Hobbs, Rolfes, Hasegawa, and Wilson, C.

AN ACT Relating to public interest considerations in the transfer or change of surface water rights; amending RCW 90.03.380 and 90.03.380; adding a new section to chapter 82.45 RCW; adding a new section to chapter 43.21A RCW; providing an effective date; and providing expiration dates.

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

**Sec.**  RCW 90.03.380 and 2011 c 112 s 3 are each amended to read as follows:

(1) The right to the use of water which has been applied to a beneficial use in the state shall be and remain appurtenant to the land or place upon which the same is used((~~: PROVIDED, HOWEVER, That the~~)), except as provided in this section. The right may be transferred to another or to others and become appurtenant to any other land or place of use without loss of priority of right theretofore established if ((~~such change can be made without detriment or injury to existing rights~~)) approved as provided in this section. The point of diversion of water for beneficial use or the purpose of use may be changed((~~, if such change can be made without detriment or injury to existing rights~~)) as provided in this section. A change in the place of use, point of diversion, and/or purpose of use of a water right to enable irrigation of additional acreage or the addition of new uses may be permitted if such change results in no increase in the annual consumptive quantity of water used under the water right. For purposes of this section, "annual consumptive quantity" means the estimated or actual annual amount of water diverted pursuant to the water right, reduced by the estimated annual amount of return flows, averaged over the two years of greatest use within the most recent five-year period of continuous beneficial use of the water right.

(2) Before any transfer of such right to use water or change of the point of diversion of water or change of purpose of use can be made, any person having an interest in the transfer or change, shall file a written application therefor with the department, and the application shall not be granted until notice of the application is published as provided in RCW 90.03.280. ((~~If it shall appear that such transfer or such change may be made without injury or detriment to existing rights, the department shall issue to the applicant a certificate in duplicate granting the right for such transfer or for such change of point of diversion or of use.~~)) The department may grant a certificate for the transfer or change if it determines that the transfer or change can be made without detriment or injury to existing rights; and for interbasin water rights transfers, that the transfer is consistent with the public interest, considering the following:

(a) The economic net benefits to the state and local region, including the consideration of the opportunity costs of alternative foregone uses of the water in the basin of the water source;

(b) The cost-effectiveness of the proposed use in comparison with alternative sources of water in the basin to which the use will be transferred, including the costs and benefits external to the applicant or transferee;

(c) Effects on public uses of water, including the instream uses enumerated in RCW 90.22.010 and 90.54.020;

(d) Water resource plans and local comprehensive growth management plans applicable to the area of the water source;

(e) Effects on public land and facilities and other water-related public resources;

(f) Effects of proposed water transfers to another location upon the local communities in the area of origin;

(g) Effects on water quality, public health, and safety;

(h) The extent to which the proposal maximizes water conservation and efficient use;

(i) Effects upon public access to navigable and other waters of the state; and

(j) Consistency with applicable water resource fundamental principles of RCW 90.54.020.

(3) The certificate so issued shall be filed and be made a record with the department and ((~~the~~)) a duplicate certificate issued to the applicant ((~~may~~)) must be filed with the county auditor in like manner and with the same effect as provided in the original certificate or permit to divert water. The time period that the water right was banked under RCW 90.92.070, in an approved local water plan created under RCW 90.92.090, or the water right was subject to an agreement to not divert under RCW 90.92.050 will not be included in the most recent five-year period of continuous beneficial use for the purpose of determining the annual consumptive quantity under this section. If the water right has not been used during the previous five years but the nonuse of which qualifies for one or more of the statutory good causes or exceptions to relinquishment in RCW 90.14.140 and 90.44.520, the period of nonuse is not included in the most recent five-year period of continuous beneficial use for purposes of determining the annual consumptive quantity of water under this section.

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

((~~(3)~~)) (5) A change in place of use by an individual water user or users of water provided by an irrigation district need only receive approval for the change from the board of directors of the district if the use of water continues within the irrigation district, and when water is provided by an irrigation entity that is a member of a board of joint control created under chapter 87.80 RCW, approval need only be received from the board of joint control if the use of water continues within the area of jurisdiction of the joint board and the change can be made without detriment or injury to existing rights.

((~~(4)~~)) (6) This section shall not apply to trust water rights acquired by the state through the funding of water conservation projects under chapter 90.38 RCW or RCW 90.42.010 through 90.42.070.

((~~(5)~~)) (7)(a) Pending applications for new water rights are not entitled to protection from impairment, injury, or detriment when an application relating to an existing surface or ground water right is considered.

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

(c) Notwithstanding any other existing authority to process applications, including but not limited to the authority to process applications under WAC 173-152-050 as it existed on January 1, 2001, an application relating to an existing surface or ground water right may be processed ahead of a previously filed application relating to an existing right when sufficient information for a decision on the previously filed application is not available and the applicant for the previously filed application is sent written notice that explains what information is not available and informs the applicant that processing of the next application will begin. The previously filed application does not lose its priority date and if the information is provided by the applicant within sixty days, the previously filed application shall be processed at that time. This subsection ((~~(5)~~)) (7)(c) does not affect any other existing authority to process applications.

(d) Nothing in this subsection ((~~(5)~~)) (7) is intended to stop the processing of applications for new water rights.

((~~(6)~~)) (8) No applicant for a change, transfer, or amendment of a water right may be required to give up any part of the applicant's valid water right or claim to a state agency, the trust water rights program, or to other persons as a condition of processing the application.

((~~(7)~~)) (9) In revising the provisions of this section and adding provisions to this section by chapter 237, Laws of 2001, the legislature does not intend to imply legislative approval or disapproval of any existing administrative policy regarding, or any existing administrative or judicial interpretation of, the provisions of this section not expressly added or revised.

((~~(8)~~)) (10) The development and use of a small irrigation impoundment, as defined in RCW 90.03.370(8), does not constitute a change or amendment for the purposes of this section. The exemption expressly provided by this subsection shall not be construed as requiring a change or transfer of any existing water right to enable the holder of the right to store water governed by the right.

((~~(9)~~)) (11) This section does not apply to a water right involved in an approved local water plan created under RCW 90.92.090, a water right that is subject to an agreement not to divert under RCW 90.92.050, or a banked water right under RCW 90.92.070.

((~~(10)~~)) (12)(a) The department may only approve an application submitted after July 22, 2011, for an interbasin water rights transfer after providing notice electronically to the board of county commissioners in the county of origin upon receipt of an application.

(b) ((~~For the purposes of this subsection:~~

~~(i)~~)) This subsection applies to counties located east of the crest of the Cascade mountains.

(13) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Interbasin water rights transfer" means a transfer of a water right for which the proposed point of diversion is in a different basin than the proposed place of beneficial use.

((~~(ii)~~)) (b) "County of origin" means the county from which a water right is transferred or proposed to be transferred.

((~~(c) This subsection applies to counties located east of the crest of the Cascade mountains.~~))

**Sec.**  RCW 90.03.380 and 2011 c 112 s 3 are each amended to read as follows:

(1) The right to the use of water which has been applied to a beneficial use in the state shall be and remain appurtenant to the land or place upon which the same is used((~~: PROVIDED, HOWEVER, That the~~)), except as provided in this section. The right may be transferred to another or to others and become appurtenant to any other land or place of use without loss of priority of right theretofore established if ((~~such change can be made without detriment or injury to existing rights~~)) approved as provided in this section. The point of diversion of water for beneficial use or the purpose of use may be changed((~~, if such change can be made without detriment or injury to existing rights~~)) as provided in this section. A change in the place of use, point of diversion, and/or purpose of use of a water right to enable irrigation of additional acreage or the addition of new uses may be permitted if such change results in no increase in the annual consumptive quantity of water used under the water right. For purposes of this section, "annual consumptive quantity" means the estimated or actual annual amount of water diverted pursuant to the water right, reduced by the estimated annual amount of return flows, averaged over the two years of greatest use within the most recent five-year period of continuous beneficial use of the water right.

(2) Before any transfer of such right to use water or change of the point of diversion of water or change of purpose of use can be made, any person having an interest in the transfer or change, shall file a written application therefor with the department, and the application shall not be granted until notice of the application is published as provided in RCW 90.03.280. ((~~If it shall appear that such transfer or such change may be made without injury or detriment to existing rights, the department shall issue to the applicant a certificate in duplicate granting the right for such transfer or for such change of point of diversion or of use.~~)) The department may grant a certificate for the transfer or change if it determines that the transfer or change can be made without detriment or injury to existing rights; and for interbasin water rights transfers, that the transfer is consistent with the public interest, considering the following:

(a) The economic net benefits to the state and local region, including the consideration of the opportunity costs of alternative foregone uses of the water in the basin of the water source;

(b) The cost-effectiveness of the proposed use in comparison with alternative sources of water in the basin to which the use will be transferred, including the costs and benefits external to the applicant or transferee;

(c) Effects on public uses of water, including the instream uses enumerated in RCW 90.22.010 and 90.54.020;

(d) Water resource plans and local comprehensive growth management plans applicable to the area of the water source;

(e) Effects on public land and facilities and other water-related public resources;

(f) Effects of proposed water transfers to another location upon the local communities in the area of origin;

(g) Effects on water quality, public health, and safety;

(h) The extent to which the proposal maximizes water conservation and efficient use;

(i) Effects upon public access to navigable and other waters of the state; and

(j) Consistency with applicable water resource fundamental principles of RCW 90.54.020.

(3) The certificate so issued shall be filed and be made a record with the department and ((~~the~~)) a duplicate certificate issued to the applicant ((~~may~~)) must be filed with the county auditor in like manner and with the same effect as provided in the original certificate or permit to divert water.

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

((~~(3)~~)) (5) A change in place of use by an individual water user or users of water provided by an irrigation district need only receive approval for the change from the board of directors of the district if the use of water continues within the irrigation district, and when water is provided by an irrigation entity that is a member of a board of joint control created under chapter 87.80 RCW, approval need only be received from the board of joint control if the use of water continues within the area of jurisdiction of the joint board and the change can be made without detriment or injury to existing rights.

((~~(4)~~)) (6) This section shall not apply to trust water rights acquired by the state through the funding of water conservation projects under chapter 90.38 RCW or RCW 90.42.010 through 90.42.070.

((~~(5)~~)) (7)(a) Pending applications for new water rights are not entitled to protection from impairment, injury, or detriment when an application relating to an existing surface or ground water right is considered.

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

(c) Notwithstanding any other existing authority to process applications, including but not limited to the authority to process applications under WAC 173-152-050 as it existed on January 1, 2001, an application relating to an existing surface or ground water right may be processed ahead of a previously filed application relating to an existing right when sufficient information for a decision on the previously filed application is not available and the applicant for the previously filed application is sent written notice that explains what information is not available and informs the applicant that processing of the next application will begin. The previously filed application does not lose its priority date and if the information is provided by the applicant within sixty days, the previously filed application shall be processed at that time. This subsection ((~~(5)~~)) (7)(c) does not affect any other existing authority to process applications.

(d) Nothing in this subsection ((~~(5)~~)) (7) is intended to stop the processing of applications for new water rights.

((~~(6)~~)) (8) No applicant for a change, transfer, or amendment of a water right may be required to give up any part of the applicant's valid water right or claim to a state agency, the trust water rights program, or to other persons as a condition of processing the application.

((~~(7)~~)) (9) In revising the provisions of this section and adding provisions to this section by chapter 237, Laws of 2001, the legislature does not intend to imply legislative approval or disapproval of any existing administrative policy regarding, or any existing administrative or judicial interpretation of, the provisions of this section not expressly added or revised.

((~~(8)~~)) (10) The development and use of a small irrigation impoundment, as defined in RCW 90.03.370(8), does not constitute a change or amendment for the purposes of this section. The exemption expressly provided by this subsection shall not be construed as requiring a change or transfer of any existing water right to enable the holder of the right to store water governed by the right.

((~~(9)~~)) (11)(a) The department may only approve an application submitted after June 30, 2019, for an interbasin water rights transfer after providing notice electronically to the board of county commissioners in the county of origin upon receipt of an application.

(b) ((~~For the purposes of this subsection:~~

~~(i)~~)) This subsection applies to counties located east of the crest of the Cascade mountains.

(12) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Interbasin water rights transfer" means a transfer of a water right for which the proposed point of diversion is in a different basin than the proposed place of beneficial use.

((~~(ii)~~)) (b) "County of origin" means the county from which a water right is transferred or proposed to be transferred.

((~~(c) This subsection applies to counties located east of the crest of the Cascade mountains.~~))

NEW SECTION. **Sec.**  A new section is added to chapter 82.45 RCW to read as follows:

(1) For the purposes of this chapter, the term "sale" as defined in RCW 82.45.010 does not apply to the sale of a water right to be transferred separately from the land to which it is appurtenant, provided that the purchaser, within thirty days of the sale, files with the department of ecology a notice of the sale that includes the following:

(a) The amount of the selling price;

(b) A description of the water right being transferred, including reference to the permit or certificate for the right issued by the department of ecology;

(c) Whether the water subject to the sale will continue to be used upon the land to which it is appurtenant; and

(d) Where the purchaser intends to seek approval for a change in place of use of the water right, whether the purchaser intends to temporarily transfer the water right into the state trust water rights program under chapter 90.42 RCW.

(2) The purchaser must provide notice immediately to the seller upon the filing of the notice under subsection (1) of this section.

(3) This section expires June 30, 2025.

NEW SECTION. **Sec.**  A new section is added to chapter 43.21A RCW to read as follows:

(1) By December 1, 2024, the department must submit a report to the appropriate committees of the senate and house of representatives in compliance with RCW 43.01.036 that summarizes the information provided in notices of the sale of water rights under section 3 of this act. The department in consultation with the department of revenue shall include a recommendation on whether to extend the provisions of section 3 of this act.

(2) This section expires June 30, 2025.

NEW SECTION. **Sec.**  Section 1 of this act expires June 30, 2021.

NEW SECTION. **Sec.**  Section 2 of this act takes effect June 30, 2021.

**--- END ---**