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ENGROSSED SUBSTITUTE HOUSE BILL 1775

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State of Washington

54th Legislature

1995 Regular Session

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

Read first time 02/28/95.

1 AN ACT Relating to water transfers and changes; amending RCW  
2 90.03.380, 90.44.100, 90.03.290, and 90.44.445; and adding a new  
3 section to chapter 90.03 RCW.

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

5 **Sec. 1.** RCW 90.03.380 and 1991 c 347 s 15 are each amended to read  
6 as follows:

7 (1) The right to the use of water which has been applied to a  
8 beneficial use in the state shall be and remain appurtenant to the land  
9 or place upon which the same is used: PROVIDED, HOWEVER, That (~~said~~)  
10 the right may be transferred to another or to others and become  
11 appurtenant to any other land or place of use without loss of priority  
12 of right theretofore established if such change can be made without  
13 detriment or injury to existing rights. The point of diversion of  
14 water for beneficial use or the purpose of use may be changed, if such  
15 change can be made without detriment or injury to existing rights.  
16 Before any transfer of such right to use water or change of the point  
17 of diversion of water or change of purpose of use can be made, any  
18 person having an interest in the transfer or change, shall file a  
19 written application therefor with the department, and (~~said~~) the

1 application shall not be granted until notice of ~~((said))~~ the  
2 application ~~((shall be))~~ is published as provided in RCW 90.03.280. If  
3 it shall appear that such transfer or such change may be made without  
4 injury or detriment to existing rights, the department shall issue to  
5 the applicant a certificate in duplicate granting the right for such  
6 transfer or for such change of point of diversion or of use. The  
7 certificate so issued shall be filed and be made a record with the  
8 department and the duplicate certificate issued to the applicant may be  
9 filed with the county auditor in like manner and with the same effect  
10 as provided in the original certificate or permit to divert water.

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

17 (3) A change in place of use by an individual water user or users  
18 of water provided by an irrigation district need only receive approval  
19 for the change from the board of directors of the district if the use  
20 of water continues within the irrigation district. The board of  
21 directors may approve such a change if the board determines that the  
22 change: Will not adversely affect the district's ability to deliver  
23 water to other landowners; will not require the construction by the  
24 district of diversion or drainage facilities unless the board finds  
25 that the construction by the district is in the interest of the  
26 district; will not impair the financial or operational integrity of the  
27 district; and is consistent with the contractual obligations of the  
28 district.

29 (4) Subsections (1), (2), and (3) of this section do not apply to  
30 a change regarding a portion of the water governed by a water right  
31 that is made surplus to the beneficial uses exercised under the right  
32 through the implementation of practices or technologies, including but  
33 not limited to conveyance practices or technologies, which are more  
34 efficient or more water use efficient than those under which the right  
35 was perfected or through a change in the crops grown under the water  
36 right. The use within an irrigation district of water supplied by the  
37 district and made surplus as provided in this subsection shall be  
38 regulated solely as provided by the board of directors of the  
39 irrigation district except as follows: Such a use requires the

1 approval of the board of directors of the irrigation district or must  
2 otherwise be authorized by the board; the board may approve or  
3 authorize such a use only if the use does not impair the financial or  
4 operational integrity of the district; and water made surplus through  
5 a change in the crops grown with district-supplied water is not  
6 available for use as a matter of right by the individual water user  
7 making the change, but may be used by the board for the benefit of the  
8 district generally. The district's board of directors may approve or  
9 otherwise authorize under this subsection uses of such surplus water  
10 that result in the total irrigated acreage within the district  
11 exceeding the irrigated acreage recorded with the department for the  
12 district's water right if the board notifies the department of the  
13 change in the irrigated acreage within the district. Such a  
14 notification provides a change in the district's water right and, upon  
15 receiving the notification, the department shall revise its records for  
16 the district's right to reflect the change. The use of water other  
17 than irrigation district-supplied water that is made surplus as  
18 provided in this subsection is governed by section 2 of this act.

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

22 (6) The department may not initiate relinquishment proceedings  
23 under chapter 90.14 RCW regarding a water right for which an  
24 application for a transfer or change is filed under this section for a  
25 period of two years after the date the department receives the filing.

26 NEW SECTION. Sec. 2. A new section is added to chapter 90.03 RCW  
27 to read as follows:

28 If a portion of the water governed by a water right is made surplus  
29 to the beneficial uses exercised under the right through the  
30 implementation of practices or technologies, including but not limited  
31 to conveyance practices or technologies, which are more efficient or  
32 more water use efficient than those under which the right was perfected  
33 or through a change in the crops grown under the water right, the right  
34 to use the surplus water may be changed to use on other lands owned by  
35 the holder of the water right that are contiguous to the lands upon  
36 which the use of the water was authorized by the right before such a  
37 change. Such a change shall be made without loss of priority of the  
38 right. The holder of the water right shall notify the department of

1 such a change. The notification provides a change in the holder's  
2 water right and, upon receiving the notification, the department shall  
3 revise its records for the water right to reflect the change.

4 This section does not apply to water supplied by an irrigation  
5 district.

6 **Sec. 3.** RCW 90.44.100 and 1987 c 109 s 113 are each amended to  
7 read as follows:

8 (1) After an application to, and upon the issuance by the  
9 department of an amendment to the appropriate permit or certificate of  
10 ground water right, the holder of a valid right to withdraw public  
11 ground waters may, without losing his priority of right, construct  
12 wells or other means of withdrawal at a new location in substitution  
13 for or in addition to those at the original location, or he may change  
14 the manner or the place of use of the water(~~(: PROVIDED, HOWEVER, That~~  
15 ~~such))~~). An amendment shall be issued only after publication of notice  
16 of the application and findings as prescribed in the case of an  
17 original application. Such amendment shall be issued by the department  
18 only on the conditions that: ~~((+1))~~ (a) The additional or substitute  
19 well or wells shall tap the same body of public ground water as the  
20 original well or wells; ~~((+2))~~ (b) use of the original well or wells  
21 shall be discontinued upon construction of the substitute well or  
22 wells; ~~((+3))~~ (c) the construction of an additional well or wells  
23 shall not enlarge the right conveyed by the original permit or  
24 certificate; and ~~((+4))~~ (d) other existing rights shall not be  
25 impaired. The department may specify an approved manner of  
26 construction and shall require a showing of compliance with the terms  
27 of the amendment, as provided in RCW 90.44.080 in the case of an  
28 original permit.

29 (2) This section does not apply to a change in use of a portion of  
30 the water governed by a ground water right that is made surplus to the  
31 beneficial uses exercised under the right through the implementation of  
32 practices or technologies, including but not limited to conveyance  
33 practices or technologies, which are more efficient or more water use  
34 efficient than those under which the right was perfected or through a  
35 change in the crops grown under the water right. RCW 90.03.380(4) and  
36 section 2 of this act apply to water made surplus as provided in this  
37 subsection.

1       (3) The department may not initiate relinquishment proceedings  
2 under chapter 90.14 RCW regarding a water right for which an  
3 application for a transfer or change is filed under this section for a  
4 period of two years after the date the department receives the filing.

5       **Sec. 4.** RCW 90.03.290 and 1994 c 264 s 84 are each amended to read  
6 as follows:

7       When an application complying with the provisions of this chapter  
8 and with the rules and regulations of the department has been filed,  
9 the same shall be placed on record with the department, and it shall be  
10 its duty to investigate the application, and determine what water, if  
11 any, is available for appropriation, and find and determine to what  
12 beneficial use or uses it can be applied. If it is proposed to  
13 appropriate water for irrigation purposes, the department shall  
14 investigate, determine and find what lands are capable of irrigation by  
15 means of water found available for appropriation. If it is proposed to  
16 appropriate water for the purpose of power development, the department  
17 shall investigate, determine and find whether the proposed development  
18 is likely to prove detrimental to the public interest, having in mind  
19 the highest feasible use of the waters belonging to the public. If the  
20 application does not contain, and the applicant does not promptly  
21 furnish sufficient information on which to base such findings, the  
22 department may issue a preliminary permit, for a period of not to  
23 exceed three years, requiring the applicant to make such surveys,  
24 investigations, studies, and progress reports, as in the opinion of the  
25 department may be necessary. If the applicant fails to comply with the  
26 conditions of the preliminary permit, it and the application or  
27 applications on which it is based shall be automatically canceled and  
28 the applicant so notified. If the holder of a preliminary permit  
29 shall, before its expiration, file with the department a verified  
30 report of expenditures made and work done under the preliminary permit,  
31 which, in the opinion of the department, establishes the good faith,  
32 intent and ability of the applicant to carry on the proposed  
33 development, the preliminary permit may, with the approval of the  
34 governor, be extended, but not to exceed a maximum period of five years  
35 from the date of the issuance of the preliminary permit. The  
36 department shall make and file as part of the record in the matter,  
37 written findings of fact concerning all things investigated, and if it  
38 shall find that there is water available for appropriation for a

1 beneficial use, and the appropriation thereof as proposed in the  
2 application will not impair existing rights or be detrimental to the  
3 public welfare, it shall issue a permit stating the amount of water to  
4 which the applicant shall be entitled and the beneficial use or uses to  
5 which it may be applied: PROVIDED, That where the water applied for is  
6 to be used for irrigation purposes, it shall become appurtenant only to  
7 such land as may be reclaimed thereby to the full extent of the soil  
8 for agricultural purposes. But where there is no unappropriated water  
9 in the proposed source of supply, or where the proposed use conflicts  
10 with existing rights, or threatens to prove detrimental to the public  
11 interest, having due regard to the highest feasible development of the  
12 use of the waters belonging to the public, it shall be duty of the  
13 department to reject such application and to refuse to issue the permit  
14 asked for. If the permit is refused because of conflict with existing  
15 rights and such applicant shall acquire same by purchase or  
16 condemnation under RCW 90.03.040, the department may thereupon grant  
17 such permit. Any application may be approved for a less amount of  
18 water than that applied for, if there exists substantial reason  
19 therefor, and in any event shall not be approved for more water than  
20 can be applied to beneficial use for the purposes named in the  
21 application. In determining whether or not a permit shall issue upon  
22 any application, it shall be the duty of the department to investigate  
23 all facts relevant and material to the application. After the  
24 department approves said application in whole or in part and before any  
25 permit shall be issued thereon to the applicant, such applicant shall  
26 pay the fee provided in RCW 90.03.470: PROVIDED FURTHER, That in the  
27 event a permit is issued by the department upon any application, it  
28 shall be its duty to notify the director of fish and wildlife of such  
29 issuance.

30 This section does not apply to changes made under section 2 of this  
31 act or to applications for transfers or changes made under RCW  
32 90.03.380 or 90.44.100.

33 **Sec. 5.** RCW 90.44.445 and 1993 c 99 s 1 are each amended to read  
34 as follows:

35 In any acreage expansion program adopted by the department as an  
36 element of a ground water management program, the authorization for a  
37 water right certificate holder to participate in the program shall be  
38 on an annual basis for the first two years. After the two-year period,

1 the department may authorize participation for ten-year periods. The  
2 department may authorize participation for ten-year periods for  
3 certificate holders who have already participated in an acreage  
4 expansion program for two years. The department may require annual  
5 certification that the certificate holder has complied with all  
6 requirements of the program. The department may terminate the  
7 authority of a certificate holder to participate in the program for one  
8 calendar year if the certificate holder fails to comply with the  
9 requirements of the program.

10 This section applies only in an area with a ground water area or  
11 subarea management program in effect on the effective date of this  
12 section. The provisions of section 2 of this act, RCW 90.03.380, and  
13 90.44.100 apply to transfers, changes, and amendments to permits or  
14 rights for the beneficial use of ground water in any other area.

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