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**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; and amending RCW  
2 90.03.380, 90.44.100, 90.03.290, and 90.44.445.

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

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

6 (1) The right to the use of water which has been applied to a  
7 beneficial use in the state shall be and remain appurtenant to the land  
8 or place upon which the same is used: PROVIDED, HOWEVER, That ~~((said))~~  
9 the right may be transferred to another or to others and become  
10 appurtenant to any other land or place of use without loss of priority  
11 of right theretofore established if such change can be made without  
12 detriment or injury to existing rights. The point of diversion of  
13 water for beneficial use or the purpose of use may be changed, if such  
14 change can be made without detriment or injury to existing rights.  
15 Before any transfer of such right to use water or change of the point  
16 of diversion of water or change of purpose of use can be made, any  
17 person having an interest in the transfer or change, shall file a  
18 written application therefor with the department, and ~~((said))~~ the  
19 application shall not be granted until notice of ~~((said))~~ the

1 application (~~shall be~~) is published as provided in RCW 90.03.280. If  
2 it shall appear that such transfer or such change may be made without  
3 injury or detriment to existing rights, the department shall issue to  
4 the applicant a certificate in duplicate granting the right for such  
5 transfer or for such change of point of diversion or of use. The  
6 certificate so issued shall be filed and be made a record with the  
7 department and the duplicate certificate issued to the applicant may be  
8 filed with the county auditor in like manner and with the same effect  
9 as provided in the original certificate or permit to divert water.

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

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

26 The board may approve under this subsection a change concerning  
27 surplus waters under RCW 90.44.100(2) or subsection (4) of this section  
28 that results in the total irrigated acreage within the district  
29 exceeding the irrigated acreage recorded with the department for the  
30 district's water right if the board notifies the department of the  
31 change in the irrigated acreage within the district. Upon  
32 notification, the department shall revise its records for the  
33 district's right to reflect the change.

34 (4) If a portion of the water governed by a water right is made  
35 surplus to the beneficial uses exercised under the right through the  
36 implementation of practices or technologies, including but not limited  
37 to conveyance practices or technologies, which are more water use  
38 efficient than those under which the right was perfected or through a  
39 change in the crops grown under the water right, the right to use the

1 surplus water may be changed to use on other lands owned by the holder  
2 of the water right that are contiguous to the lands upon which the use  
3 of the water was authorized by the right before such a change. Such a  
4 change shall be made without loss of priority of the right. If the  
5 change involves the use of water provided by an irrigation district, it  
6 may not be made without the approval of the board of directors of the  
7 district under subsection (3) of this section. If the change does not  
8 involve the use of such district provided water, the holder of the  
9 water right shall notify the department of the change. Upon  
10 notification, the department shall revise its records for the right to  
11 reflect the change.

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

15 **Sec. 2.** RCW 90.44.100 and 1987 c 109 s 113 are each amended to  
16 read as follows:

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

1       (2) If a portion of the ground water governed by a water right is  
2 made surplus to the beneficial uses exercised under the right through  
3 the implementation of practices or technologies, including but not  
4 limited to conveyance practices and technologies, which are more water  
5 use efficient than those under which the right was perfected or through  
6 a change in the crops grown under the water right, the right to use the  
7 surplus water may be changed to use on other lands owned by the holder  
8 of the water right that are contiguous to the lands upon which the use  
9 of the water was authorized by the right before such a change. Such a  
10 change shall be made without loss of priority of the right. If the  
11 change involves the use of water provided by an irrigation district, it  
12 may not be made without the approval of the board of directors of the  
13 district under RCW 90.03.380(3). If the change does not involve the  
14 use of such district provided water, the holder of the water right  
15 shall notify the department of the change. Upon notification, the  
16 department shall revise its records for the right to reflect the  
17 change.

18       **Sec. 3.** RCW 90.03.290 and 1994 c 264 s 84 are each amended to read  
19 as follows:

20       When an application complying with the provisions of this chapter  
21 and with the rules and regulations of the department has been filed,  
22 the same shall be placed on record with the department, and it shall be  
23 its duty to investigate the application, and determine what water, if  
24 any, is available for appropriation, and find and determine to what  
25 beneficial use or uses it can be applied. If it is proposed to  
26 appropriate water for irrigation purposes, the department shall  
27 investigate, determine and find what lands are capable of irrigation by  
28 means of water found available for appropriation. If it is proposed to  
29 appropriate water for the purpose of power development, the department  
30 shall investigate, determine and find whether the proposed development  
31 is likely to prove detrimental to the public interest, having in mind  
32 the highest feasible use of the waters belonging to the public. If the  
33 application does not contain, and the applicant does not promptly  
34 furnish sufficient information on which to base such findings, the  
35 department may issue a preliminary permit, for a period of not to  
36 exceed three years, requiring the applicant to make such surveys,  
37 investigations, studies, and progress reports, as in the opinion of the  
38 department may be necessary. If the applicant fails to comply with the

1 conditions of the preliminary permit, it and the application or  
2 applications on which it is based shall be automatically canceled and  
3 the applicant so notified. If the holder of a preliminary permit  
4 shall, before its expiration, file with the department a verified  
5 report of expenditures made and work done under the preliminary permit,  
6 which, in the opinion of the department, establishes the good faith,  
7 intent and ability of the applicant to carry on the proposed  
8 development, the preliminary permit may, with the approval of the  
9 governor, be extended, but not to exceed a maximum period of five years  
10 from the date of the issuance of the preliminary permit. The  
11 department shall make and file as part of the record in the matter,  
12 written findings of fact concerning all things investigated, and if it  
13 shall find that there is water available for appropriation for a  
14 beneficial use, and the appropriation thereof as proposed in the  
15 application will not impair existing rights or be detrimental to the  
16 public welfare, it shall issue a permit stating the amount of water to  
17 which the applicant shall be entitled and the beneficial use or uses to  
18 which it may be applied: PROVIDED, That where the water applied for is  
19 to be used for irrigation purposes, it shall become appurtenant only to  
20 such land as may be reclaimed thereby to the full extent of the soil  
21 for agricultural purposes. But where there is no unappropriated water  
22 in the proposed source of supply, or where the proposed use conflicts  
23 with existing rights, or threatens to prove detrimental to the public  
24 interest, having due regard to the highest feasible development of the  
25 use of the waters belonging to the public, it shall be duty of the  
26 department to reject such application and to refuse to issue the permit  
27 asked for. If the permit is refused because of conflict with existing  
28 rights and such applicant shall acquire same by purchase or  
29 condemnation under RCW 90.03.040, the department may thereupon grant  
30 such permit. Any application may be approved for a less amount of  
31 water than that applied for, if there exists substantial reason  
32 therefor, and in any event shall not be approved for more water than  
33 can be applied to beneficial use for the purposes named in the  
34 application. In determining whether or not a permit shall issue upon  
35 any application, it shall be the duty of the department to investigate  
36 all facts relevant and material to the application. After the  
37 department approves said application in whole or in part and before any  
38 permit shall be issued thereon to the applicant, such applicant shall  
39 pay the fee provided in RCW 90.03.470: PROVIDED FURTHER, That in the

1 event a permit is issued by the department upon any application, it  
2 shall be its duty to notify the director of fish and wildlife of such  
3 issuance.

4 This section does not apply to applications for transfers or  
5 changes made under RCW 90.03.380 or 90.44.100.

6 **Sec. 4.** RCW 90.44.445 and 1993 c 99 s 1 are each amended to read  
7 as follows:

8 In any acreage expansion program adopted by the department as an  
9 element of a ground water management program, the authorization for a  
10 water right certificate holder to participate in the program shall be  
11 on an annual basis for the first two years. After the two-year period,  
12 the department may authorize participation for ten-year periods. The  
13 department may authorize participation for ten-year periods for  
14 certificate holders who have already participated in an acreage  
15 expansion program for two years. The department may require annual  
16 certification that the certificate holder has complied with all  
17 requirements of the program. The department may terminate the  
18 authority of a certificate holder to participate in the program for one  
19 calendar year if the certificate holder fails to comply with the  
20 requirements of the program.

21 This section applies only in an area with a ground water area or  
22 subarea management program in effect on the effective date of this  
23 section. The provisions of RCW 90.44.100 apply to amendments to  
24 permits or rights for the beneficial use of ground water in any other  
25 area.

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