

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE HOUSE BILL 1272**

55th Legislature  
1997 Regular Session

Passed by the House April 19, 1997  
Yeas 89 Nays 0

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**Speaker of the  
House of Representatives**

Passed by the Senate April 14, 1997  
Yeas 47 Nays 0

\_\_\_\_\_  
**President of the Senate**

Approved

\_\_\_\_\_  
**Governor of the State of Washington**

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1272** as passed by the House of Representatives and the Senate on the dates hereon set forth.

\_\_\_\_\_  
**Chief Clerk**

FILED

**Secretary of State  
State of Washington**

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**SUBSTITUTE HOUSE BILL 1272**

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Passed Legislature - 1997 Regular Session

AS AMENDED BY THE SENATE

**State of Washington                      55th Legislature                      1997 Regular Session**

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

Read first time 02/14/97.

1            AN ACT Relating to water transfers; and adding a new chapter to  
2 Title 90 RCW.

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

4            NEW SECTION.    **Sec. 1.**    The legislature finds:

5            (1) Voluntary water transfers between water users can reallocate  
6 water use in a manner that will result in more efficient use of water  
7 resources;

8            (2) Voluntary water transfers can help alleviate water shortages,  
9 save capital outlays, reduce development costs, and provide an  
10 incentive for investment in water conservation efforts by water right  
11 holders; and

12            (3) The state should expedite the administrative process for  
13 noncontested water transfers among water right holders, conveying  
14 greater operational control to water managers and water right holders.

15            NEW SECTION.    **Sec. 2.**    The following definitions apply throughout  
16 this chapter, unless the context clearly requires otherwise.

17            (1) "Board" means a water conservancy board created under this  
18 chapter.

- 1 (2) "Commissioner" means a member of a water conservancy board.  
2 (3) "Department" means the department of ecology.  
3 (4) "Director" means the director of the department of ecology.

4 NEW SECTION. **Sec. 3.** (1) The county legislative authority of a  
5 county may create a water conservancy board, subject to approval by the  
6 director, for the purpose of expediting voluntary water transfers  
7 within the county.

8 (2) A water conservancy board may be initiated by: (a) A  
9 resolution of the county legislative authority; (b) a resolution  
10 presented to the county legislative authority calling for the creation  
11 of a board by the legislative authority of an irrigation district,  
12 public utility district that operates a public water system, a  
13 reclamation district, a city operating a public water system, or a  
14 water-sewer district that operates a public water system; (c) a  
15 resolution by the governing body of a cooperative or mutual corporation  
16 that operates a public water system serving one hundred or more  
17 accounts; (d) a petition signed by five or more water rights holders,  
18 including their addresses, who divert water for use within the county;  
19 or (e) any combination of (a) through (d) of this subsection. The  
20 resolution or petition must state the need for the board, include  
21 proposed bylaws or rules and procedures that will govern the operation  
22 of the board, identify the geographic boundaries where there is an  
23 initial interest in transacting water sales or transfers, and describe  
24 the proposed method for funding the operation of the board.

25 (3) After receiving a resolution or petition to create a board, a  
26 county legislative authority shall determine its sufficiency. If the  
27 county legislative authority finds that the resolution or petition is  
28 sufficient, or if the county is initiating the creation of a board upon  
29 its own motion, it shall hold at least one public hearing on the  
30 proposed creation of the board. Notice of the hearing shall be  
31 published at least once in a newspaper of general circulation in the  
32 county not less than ten days nor more than thirty days before the date  
33 of the hearing. The notice shall describe the time, date, place, and  
34 purpose of the hearing, as well as the purpose of the board. Following  
35 the hearing, the county legislative authority may adopt a resolution  
36 approving the creation of the board if it finds that the board's  
37 creation is in the public interest.

1        NEW SECTION.    **Sec. 4.**    (1) The county legislative authority shall  
2 forward a copy of the resolution or petition calling for the creation  
3 of the board, a copy of the resolution approving the creation of the  
4 board, and a summary of the public testimony presented at the public  
5 hearing to the director following the adoption of the resolution  
6 calling for the board's creation.

7        (2) The director shall approve or deny the creation of a board  
8 within forty-five days after the county legislative authority has  
9 submitted all information required under subsection (1) of this  
10 section. The director must determine whether the creation of the board  
11 would further the purposes of this chapter and is in the public  
12 interest. The director shall include a description of the necessary  
13 training requirements for commissioners in the notice of approval sent  
14 to the county legislative authority.

15        NEW SECTION.    **Sec. 5.**    The director of the department may, as  
16 deemed necessary by the director, adopt rules in accordance with  
17 chapter 34.05 RCW necessary to carry out this chapter, including  
18 minimum requirements for the training and continuing education of  
19 commissioners. Training courses for commissioners shall include an  
20 overview of state water law and hydrology. Prior to commissioners  
21 taking action on proposed water right transfers, the commissioners  
22 shall comply with training requirements that include state water law  
23 and hydrology.

24        NEW SECTION.    **Sec. 6.**    A water conservancy board constitutes a  
25 public body corporate and politic and a separate unit of local  
26 government in the state. Each board shall consist of three  
27 commissioners appointed by the county legislative authority for six-  
28 year terms. The county legislative authority shall stagger the initial  
29 appointment of commissioners so that the first commissioners who are  
30 appointed shall serve terms of two, four, and six years, respectively,  
31 from the date of their appointment. All vacancies shall be filled for  
32 the unexpired term. The county legislative authority shall consider,  
33 but is not limited in appointing, nominations to the board by people or  
34 entities petitioning or requesting the creation of the board. However,  
35 the county legislative authority shall ensure that individual water  
36 right holders who divert water for use within the county are  
37 represented on the board. In making appointments to the board, the

1 county legislative authority shall choose from among persons who are  
2 residents of the county or a county that is contiguous to the county  
3 that the water conservancy board is to serve. No commissioner may  
4 participate in board decisions until he or she has successfully  
5 completed the necessary training required under section 5 of this act.  
6 Commissioners shall serve without compensation, but are entitled to  
7 reimbursement for necessary travel expenses in accordance with RCW  
8 43.03.050 and 43.03.060 and costs incident to training.

9 NEW SECTION. **Sec. 7.** (1) A water conservancy board may acquire,  
10 purchase, hold, lease, manage, occupy, and sell real and personal  
11 property or any interest therein, enter into and perform all necessary  
12 contracts, appoint and employ necessary agents and employees and fix  
13 their compensation, employ contractors including contracts for  
14 professional services, sue and be sued, and do any and all lawful acts  
15 required and expedient to carry out the purposes of this chapter.

16 (2) A board constitutes an independently funded entity, and may  
17 provide for its own funding as determined by the commissioners. The  
18 board may accept grants and may adopt fees for processing applications  
19 for transfers of water rights to fund the activities of the board. A  
20 board may not impose taxes or acquire property by the exercise of  
21 eminent domain.

22 NEW SECTION. **Sec. 8.** A board shall operate on a county-wide  
23 basis, and shall have the following powers, in addition to any others  
24 granted in this chapter:

25 (1) A board may establish a water transfer exchange through which  
26 all or part of the water that any person is entitled to use by reason  
27 of owning or holding a water right may be listed for sale or transfer.  
28 The board may approve water transfers involving a change in place of  
29 use, point of diversion or withdrawal, purpose of use, time of use,  
30 source of supply, quantity of use permitted, and the place of storage.  
31 Any water transfer approved by the board is subject to final approval  
32 by the director pursuant to section 11 of this act.

33 (2) The board may approve the transfer of a water right or a water  
34 right claim filed under chapter 90.14 RCW that has not been  
35 adjudicated. The board shall make a tentative determination as to the  
36 validity and extent of the existing right, and may only approve  
37 transfers of those rights to the extent they are deemed valid by the

1 board. Neither the board's approval of a transfer, nor the director's  
2 approval of the board's action constitutes an adjudication of the  
3 validity, priority, or quantity of the transferor's water right as  
4 between the transferor or the transferee and the state, or as between  
5 the transferor or the transferee and one or more water use claimants,  
6 and such approvals do not preclude or prejudice a subsequent challenge  
7 to the validity, priority, or quantity of the right in an adjudicatory  
8 proceeding. The tentative determination of a water right by a board  
9 does not preclude a different conclusion in a subsequent adjudication.

10 (3) Water transfers approved by the board must remain within an  
11 existing category of beneficial use, and a transfer of water that is  
12 being used for agricultural applications is restricted to short-term or  
13 long-term leases.

14 (4) Each board shall maintain and publish all information made  
15 available to it concerning water rights listed with the board and any  
16 application to the board for approval of a water transfer. Each board  
17 shall establish policies and procedures, consistent with applicable  
18 law, for the administration of a system of timely local approvals for  
19 water transfers under this chapter. The administration shall be  
20 performed exclusively by the board, but the department may provide  
21 technical assistance to the board.

22 NEW SECTION. **Sec. 9.** (1) Applications to the board for transfers  
23 shall be made on a form provided by the department, and shall contain  
24 such additional information as may be required by the board in order to  
25 review and act upon the application. At a minimum, the application  
26 shall include information sufficient to establish to the board's  
27 satisfaction of the transferor's right to the quantity of water being  
28 transferred, and a description of any applicable limitations on the  
29 right to use water, including the point of diversion or withdrawal,  
30 place of use, source of supply, purpose of use, quantity of use  
31 permitted, time of use, period of use, and the place of storage.

32 (2) The transferor and the transferee of any proposed water  
33 transfer may apply to a board for approval of the transfer if the water  
34 proposed to be transferred is currently diverted or used within the  
35 geographic boundaries of the county, or would be diverted or used  
36 within the geographic boundaries of the county if the transfer is  
37 approved. In the case of a proposed water transfer in which the water  
38 is currently diverted or would be diverted outside the geographic

1 boundaries of the county, the board shall hold a public hearing in the  
2 county of the diversion or proposed diversion. The board shall provide  
3 for prominent publication of notice of such hearing in a newspaper of  
4 general circulation published in the county in which the hearing is to  
5 be held for the purpose of affording an opportunity for interested  
6 persons to comment upon the application.

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

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

28 NEW SECTION. **Sec. 10.** (1) If an application for a transfer is  
29 proposed to transfer water from one irrigation district to another,  
30 approval of the transfer shall be conditioned upon receipt of the  
31 concurrence from each of the irrigation districts that the transfer  
32 will not adversely affect the ability to deliver water to other  
33 landowners or impair the financial integrity of either of the  
34 districts.

35 (2) A transfer involving a change in place or use or a  
36 nonconsumptive use by an individual water user or users of water  
37 provided by an irrigation district need only receive the approval for

1 the transfer from the board of directors of the irrigation district if  
2 the water continues within the irrigation district.

3 NEW SECTION. **Sec. 11.** (1) If a transfer is approved by the board,  
4 the board shall submit a copy of the proposed certificate conditionally  
5 approving the transfer to the department for review. The board shall  
6 also submit a report summarizing any factual findings on which the  
7 board relied in deciding to approve the proposed transfer. The board  
8 shall also transmit notice by mail to any person who objected to the  
9 transfer or who requested notice.

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

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

27 NEW SECTION. **Sec. 12.** The decision of the director to approve an  
28 action to create a board, or to approve, deny, or modify a water  
29 transfer either by action or nonaction shall be appealable in the same  
30 manner as other water right decisions made pursuant to chapter 90.03  
31 RCW.

32 NEW SECTION. **Sec. 13.** Neither the county nor the department shall  
33 be subject to any cause of action or claim for damages arising out of  
34 transfers approved by a board under this chapter.

1        NEW SECTION.    **Sec. 14.**    A person who, in good faith and without  
2 intent of circumventing water right relinquishment statutes, leases a  
3 water right under this chapter may not lose any portion of that water  
4 right by relinquishment due to the nonuse of the water by the lessee.

5        NEW SECTION.    **Sec. 15.**    Nothing in this chapter eliminates or  
6 lessens the requirements necessary for the approval of interties.

7        NEW SECTION.    **Sec. 16.**    (1) A commissioner of a water conservancy  
8 board who has an ownership interest in a water right subject to an  
9 application for approval of a transfer or change by the board, shall  
10 not participate in the board's review or decision upon the application.

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

16        NEW SECTION.    **Sec. 17.**    Water conservancy board activities are  
17 subject to the open public meetings act, chapter 42.30 RCW.

18        NEW SECTION.    **Sec. 18.**    Nothing in this chapter affects transfers  
19 that may be otherwise approved under chapter 90.03 RCW.

20        NEW SECTION.    **Sec. 19.**    The department shall report biennially by  
21 December 31st of each even-numbered year to the appropriate committees  
22 of the legislature on the boards formed or sought to be formed under  
23 the authority of this chapter, the transfer applications reviewed and  
24 other activities conducted by the boards, and the funding of such  
25 boards.

26        NEW SECTION.    **Sec. 20.**    If any provision of this act or its  
27 application to any person or circumstance is held invalid, the  
28 remainder of the act or the application of the provision to other  
29 persons or circumstances is not affected.

1        NEW SECTION.    **Sec. 21.**    Sections 1 through 19 of this act  
2    constitute a new chapter in Title 90 RCW.

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