
SENATE BILL 5219

State of Washington

63rd Legislature

2013 Regular Session

By Senators Honeyford, Hatfield, Smith, Schoesler, Delvin, and Hewitt

Read first time 01/23/13. Referred to Committee on Agriculture, Water & Rural Economic Development.

1 AN ACT Relating to retaining water resources to assure the vitality
2 of local economies; adding new sections to chapter 90.42 RCW; and
3 creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that purchase of lands
6 by state agencies for less intensive economic uses may affect the
7 economic vitality of local communities by reducing essential water
8 resources necessary to retain economic activity of the area. The
9 legislature finds that a number of parcels of land purchased by state
10 agencies have water rights appurtenant to them. The legislature
11 continues to support agency efforts to allow continued use of portions
12 of land parcels that contribute to the local economy by actions such as
13 leasing back irrigated parcels to local producers for continued
14 production of food and other agricultural commodities. The legislature
15 finds that the economies in many rural areas of the state have declined
16 and are in need of retaining water resources to prevent further
17 decline.

18 The purpose of this act is to establish a process to retain water
19 rights when they are no longer used on state purchased lands and to

1 make this resource available for alternate uses to continue to support
2 the local economy, jobs, and the tax base rather than be permanently
3 lost to the economy of the area through relinquishment under chapter
4 90.14 RCW.

5 NEW SECTION. **Sec. 2.** A new section is added to chapter 90.42 RCW
6 to read as follows:

7 (1) The department of fish and wildlife, the parks and recreation
8 commission, and the department of natural resources shall each maintain
9 an inventory of water rights appurtenant to lands purchased by their
10 agencies. At least once each year, each agency shall review and record
11 whether all or a portion of the water right for each of these lands
12 purchased by the agency has been used. If the agency does not plan on
13 continuing use of all or a portion of the water right on the state-
14 owned lands, or if all or a portion of a particular water right has
15 been unused during the prior four-consecutive-year period, the agency
16 shall commence the process of transferring the unused portion of the
17 water right to the local economy water trust account established in
18 this chapter. Before the end of the fifth year of nonuse of all or a
19 portion of the water rights, the transfer must be completed and the
20 water right shall be temporarily held by the department of ecology
21 until the water right is transferred to another beneficial use as
22 provided in subsection (3) of this section.

23 (2) If an agency has commenced the process of transferring all or
24 a portion of a water right as required under subsection (1) of this
25 section, but subsequently placed the water right to beneficial use on
26 the state-owned land before the end of the fifth year, and plans to
27 continue to fully use the water right in subsequent years, the agency
28 shall notify the department of ecology to terminate the transfer of the
29 water right to the local economy water trust account.

30 (3) Water rights temporarily held by the department of ecology
31 under this section shall be available for transfer to a new use or uses
32 within the same WRIA as the original use. Once a water right is
33 transferred to the local economy water trust account, the department
34 must provide notification that a water right may be available to the
35 person who filed an application for a new water right under chapter
36 90.03 or 90.44 RCW as appropriate, based on whose water right
37 appropriation is next in line for processing within the WRIA.

1 (4)(a) A request to transfer the water right may be processed if:

2 (i) The applicant responds to the department within thirty calendar
3 days; and

4 (ii) The applicant agrees to pay the costs associated with
5 completing the transfer from the local economy water trust account to
6 the applicant's new use.

7 (b) If the thirty-day period elapses and an affirmative written
8 response is not received from the applicant by the department, the
9 department shall provide the notice to the next applicant in line in
10 accordance with subsection (3) of this section.

11 (5) If a person does not indicate an interest in obtaining a water
12 right from the local economy water trust account, it does not affect
13 the standing of the original water right application.

14 (6) This section does not apply to properties with deed
15 restrictions in conflict with this section or where application of this
16 section would otherwise violate law.

17 (7) The provisions of this section and section 3 of this act apply
18 to all WRIAs in the state.

19 (8) As used in this section and section 3 of this act, "WRIA" means
20 a water resource inventory area established in chapter 173-500 WAC.

21 NEW SECTION. **Sec. 3.** A new section is added to chapter 90.42 RCW
22 to read as follows:

23 (1) Upon the transfer of a water right under section 2(1) of this
24 act, the department shall establish a local economy trust water account
25 for the WRIA in which the water right had been used. The department
26 shall place and hold the water right in the account pending completion
27 of a transfer to another beneficial use as provided in this section and
28 section 2 of this act.

29 (2) The department may transfer all or a portion of a water right
30 held in the local economy trust water account to a new water use
31 identified through the process in section 2 of this act upon occurrence
32 of all of the following:

33 (a) The department receives a request from a qualified applicant
34 identified pursuant to section 2 of this act for transfer of a water
35 right or portion thereof; and

36 (b) The request is reviewed and approved under RCW 90.03.380 or

1 90.44.100, as applicable, for the new beneficial use or uses. The
2 department may not authorize the use of a water right if it causes
3 detriment or injury to existing rights.

4 (3) The priority date of the water right or portion thereof
5 transferred by the department from the local economy trust water
6 account shall be the priority date of the underlying water right that
7 had been transferred into the local economy trust water account.

8 (4) The department shall issue documentation for that water right
9 or portion thereof to the new water right holder based on the
10 requirements applicable to the transfer of other water rights from the
11 trust water program. Documentation must include a description of the
12 property to which the water right will be appurtenant after the water
13 right or portion thereof is transferred from local economy trust water
14 account to the new water right holder.

15 (5) The department's decision on the transfer of a water right or
16 portion thereof from the local economy trust water account may be
17 appealed to the pollution control hearings board under RCW 43.21B.230
18 or to a superior court conducting a general adjudication under RCW
19 90.03.210.

20 (6) Notice of application for transfer of a water right under this
21 section must be published by the applicant as provided under RCW
22 90.03.380. The department must provide electronic notice and
23 opportunity to comment to affected local governments and affected
24 federally recognized tribal governments before initiating use of the
25 local economy trust water account for the first time in a WRIA.

26 (7) RCW 90.14.140 through 90.14.230 have no applicability to:

27 (a) Water rights in a local economy trust water account while being
28 held by the department; and

29 (b) A construction period granted in the approved water right
30 transfer document for the new water right holder to place the water to
31 beneficial use.

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