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**SENATE BILL 5016**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Senators Honeyford and Ericksen

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

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

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

The purpose of this act is to establish a process to retain water rights when they are no longer used on state purchased lands and to make this resource available for alternate uses to continue to support the local economy, jobs, and the tax base rather than be permanently lost to the economy of the area through relinquishment under chapter 90.14 RCW.

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

(1) Within existing appropriations, the department of fish and wildlife, the parks and recreation commission, and the department of natural resources shall each maintain an inventory of water rights appurtenant to each parcel of land purchased by their agencies. Each agency shall seek assistance from the department of ecology in maintaining this inventory. At least once each year, each agency shall review and record whether all or a portion of the water right for each of these lands purchased by the agency has been beneficially used. If the agency does not plan on continuing beneficial use of all or a portion of the water right on the state-owned lands, or if all or a portion of a particular water right has been unused during the prior four-consecutive-year period, the agency shall file a change or transfer application with the department of ecology and commence the process of transferring the unused portion of the water right to the local economy trust water account established in this chapter. Before the end of the fifth year of nonuse of all or a portion of the water rights, the transfer must be completed and the water right shall be temporarily held by the department of ecology as a local economy trust water right until the water right is transferred to another beneficial use as provided in subsection (3) of this section.

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

(3) Water rights temporarily held by the department of ecology under this section shall be available for transfer to a new use or uses within the same WRIA as the original use, consistent with RCW 90.03.380 or 90.44.100, as appropriate. Once a water right is transferred to the local economy trust water account and the department has completed a trust water agreement and identified the area of suitability for transfer consistent with chapter 90.38 or 90.44 RCW, the department must provide notification that a water right may be available to the person who filed an application for a new water right under chapter 90.03 or 90.44 RCW as appropriate, based on whose water right appropriation is next in line for processing within the area of suitability for transfer within the WRIA.

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

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

(ii) The applicant agrees to pay the department's costs associated with placing the new water supplies into the local economy trust water account and completing the transfer from the local economy trust water account to the applicant's new use.

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

(5) If the department has not issued a permit within three years of the date that the water right was transferred into the local economy trust water account, the department shall submit a written report to the standing committees of the legislature with jurisdiction over water right matters, and to the legislators representing the area in which the original water right was used providing the reasons for the failure to approve a transfer of the water right to a new use.

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

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

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

(9) This section does not apply to nonconsumptive water rights used by fish hatcheries and associated rearing ponds, or to water rights associated with permit-exempt wells established under RCW 90.44.050.

(10) This section does not apply to state lands as defined in RCW 79.02.010, managed by the department of natural resources, or to state forest lands as defined in RCW 79.02.010.

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

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

(1) If the agency's nonuse of a water right meets any of the sufficient cause exceptions listed in RCW 90.14.140(1), the agency is not required to place that specific unused water into the local economy trust water account.

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

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

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

(b) The request is reviewed and approved under RCW 90.03.380 or 90.44.100, as applicable, for the new beneficial use or uses. The department may not authorize the use of a water right if it causes detriment or injury to existing rights.

(4) The priority date of the water right or portion thereof transferred by the department from the local economy trust water account shall be the priority date of the underlying water right that had been transferred into the local economy trust water account, but as between the underlying water right and the new transferred right, the underlying water right shall be deemed to be senior in priority unless otherwise specified by agreement between the agency holding the underlying water right and the new water right holder.

(5) The department shall issue documentation for that water right or portion thereof to the new water right holder based on the requirements applicable to the transfer of other water rights from the trust water program, as provided under this chapter or chapter 90.38 RCW, as applicable. Documentation must include a description of the property to which the water right will be appurtenant after the water right or portion thereof is transferred from local economy trust water account to the new water right holder.

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

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

(8) Water rights are not subject to loss by statutory relinquishment under RCW 90.14.130 through 90.14.200 while such water rights are:

(a) Waiting for a final determination from the department on a change or transfer application filed under RCW 90.03.250, 90.03.380, or 90.44.100;

(b) In a local economy trust water account while being held by the department as a trust water right under this chapter or chapter 90.38 RCW; or

(c) Within a construction or development schedule period granted in the approved water right transfer document or any development schedule granted under RCW 90.03.320 for the new water right holder to place the water to beneficial use.

**--- END ---**