
SENATE BILL 5794

State of Washington

65th Legislature

2017 Regular Session

By Senator Short

Read first time 02/10/17. Referred to Committee on Agriculture, Water, Trade & Economic Development.

1 AN ACT Relating to the transfer of seasonal irrigation water
2 rights to the trust water rights program for the purpose of providing
3 mitigation water to a third party for year-round potable water
4 supplies; amending RCW 90.03.380, 90.03.380, and 90.42.120; providing
5 an effective date; providing an expiration date; and declaring an
6 emergency.

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

8 **Sec. 1.** RCW 90.03.380 and 2011 c 112 s 2 are each amended to
9 read as follows:

10 (1) The right to the use of water which has been applied to a
11 beneficial use in the state shall be and remain appurtenant to the
12 land or place upon which the same is used: PROVIDED, HOWEVER, That
13 the right may be transferred to another or to others and become
14 appurtenant to any other land or place of use without loss of
15 priority of right theretofore established if such change can be made
16 without detriment or injury to existing rights. The point of
17 diversion of water for beneficial use or the purpose of use may be
18 changed, if such change can be made without detriment or injury to
19 existing rights. A change in the place of use, point of diversion,
20 and/or purpose of use of a water right to enable irrigation of
21 additional acreage or the addition of new uses may be permitted if

1 such change results in no increase in the annual consumptive quantity
2 of water used under the water right. For purposes of this section,
3 "annual consumptive quantity" means the estimated or actual annual
4 amount of water diverted pursuant to the water right, reduced by the
5 estimated annual amount of return flows, averaged over the two years
6 of greatest use within the most recent five-year period of continuous
7 beneficial use of the water right. Before any transfer of such right
8 to use water or change of the point of diversion of water or change
9 of purpose of use can be made, any person having an interest in the
10 transfer or change, shall file a written application therefor with
11 the department, and the application shall not be granted until notice
12 of the application is published as provided in RCW 90.03.280. If it
13 shall appear that such transfer or such change may be made without
14 injury or detriment to existing rights, the department shall issue to
15 the applicant a certificate in duplicate granting the right for such
16 transfer or for such change of point of diversion or of use. The
17 certificate so issued shall be filed and be made a record with the
18 department and the duplicate certificate issued to the applicant may
19 be filed with the county auditor in like manner and with the same
20 effect as provided in the original certificate or permit to divert
21 water. The time period that the water right was banked under RCW
22 90.92.070, in an approved local water plan created under RCW
23 90.92.090, or the water right was subject to an agreement to not
24 divert under RCW 90.92.050 will not be included in the most recent
25 five-year period of continuous beneficial use for the purpose of
26 determining the annual consumptive quantity under this section. If
27 the water right has not been used during the previous five years but
28 the nonuse of which qualifies for one or more of the statutory good
29 causes or exceptions to relinquishment in RCW 90.14.140 and
30 90.44.520, the period of nonuse is not included in the most recent
31 five-year period of continuous beneficial use for purposes of
32 determining the annual consumptive quantity of water under this
33 section.

34 (2) If an application for change proposes to transfer water
35 rights from one irrigation district to another, the department shall,
36 before publication of notice, receive concurrence from each of the
37 irrigation districts that such transfer or change will not adversely
38 affect the ability to deliver water to other landowners or impair the
39 financial integrity of either of the districts.

1 (3) A change in place of use by an individual water user or users
2 of water provided by an irrigation district need only receive
3 approval for the change from the board of directors of the district
4 if the use of water continues within the irrigation district, and
5 when water is provided by an irrigation entity that is a member of a
6 board of joint control created under chapter 87.80 RCW, approval need
7 only be received from the board of joint control if the use of water
8 continues within the area of jurisdiction of the joint board and the
9 change can be made without detriment or injury to existing rights.

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

13 (5) A transfer of a seasonal irrigation water right to the trust
14 water rights program for the purpose of providing mitigation water to
15 a third party for year-round potable water supplies pursuant to
16 chapter 90.42 RCW may not be considered to cause impairment to
17 instream flows adopted under chapters 90.22 and 90.54 RCW as long as
18 transfer of the water for mitigation does not exceed the total use
19 and consumptive use that is available under the water right in the
20 trust water rights program.

21 (6)(a) Pending applications for new water rights are not entitled
22 to protection from impairment, injury, or detriment when an
23 application relating to an existing surface or ground water right is
24 considered.

25 (b) Applications relating to existing surface or ground water
26 rights may be processed and decisions on them rendered independently
27 of processing and rendering decisions on pending applications for new
28 water rights within the same source of supply without regard to the
29 date of filing of the pending applications for new water rights.

30 (c) Notwithstanding any other existing authority to process
31 applications, including but not limited to the authority to process
32 applications under WAC 173-152-050 as it existed on January 1, 2001,
33 an application relating to an existing surface or ground water right
34 may be processed ahead of a previously filed application relating to
35 an existing right when sufficient information for a decision on the
36 previously filed application is not available and the applicant for
37 the previously filed application is sent written notice that explains
38 what information is not available and informs the applicant that
39 processing of the next application will begin. The previously filed
40 application does not lose its priority date and if the information is

1 provided by the applicant within sixty days, the previously filed
2 application shall be processed at that time. This subsection (~~(5)~~)
3 (6)(c) does not affect any other existing authority to process
4 applications.

5 (d) Nothing in this subsection (~~(5)~~) (6) is intended to stop
6 the processing of applications for new water rights.

7 (~~(6)~~) (7) No applicant for a change, transfer, or amendment of
8 a water right may be required to give up any part of the applicant's
9 valid water right or claim to a state agency, the trust water rights
10 program, or to other persons as a condition of processing the
11 application.

12 (~~(7)~~) (8) In revising the provisions of this section and adding
13 provisions to this section by chapter 237, Laws of 2001, the
14 legislature does not intend to imply legislative approval or
15 disapproval of any existing administrative policy regarding, or any
16 existing administrative or judicial interpretation of, the provisions
17 of this section not expressly added or revised.

18 (~~(8)~~) (9) The development and use of a small irrigation
19 impoundment, as defined in RCW 90.03.370(8), does not constitute a
20 change or amendment for the purposes of this section. The exemption
21 expressly provided by this subsection shall not be construed as
22 requiring a change or transfer of any existing water right to enable
23 the holder of the right to store water governed by the right.

24 (~~(9)~~) (10) This section does not apply to a water right
25 involved in an approved local water plan created under RCW 90.92.090,
26 a water right that is subject to an agreement not to divert under RCW
27 90.92.050, or a banked water right under RCW 90.92.070.

28 (~~(10)~~) (11)(a) The department may only approve an application
29 submitted after July 22, 2011, for an interbasin water rights
30 transfer after providing notice electronically to the board of county
31 commissioners in the county of origin upon receipt of an application.

32 (b) For the purposes of this subsection:

33 (i) "Interbasin water rights transfer" means a transfer of a
34 water right for which the proposed point of diversion is in a
35 different basin than the proposed place of beneficial use.

36 (ii) "County of origin" means the county from which a water right
37 is transferred or proposed to be transferred.

38 (c) This subsection applies to counties located east of the crest
39 of the Cascade mountains.

1 **Sec. 2.** RCW 90.03.380 and 2011 c 112 s 3 are each amended to
2 read as follows:

3 (1) The right to the use of water which has been applied to a
4 beneficial use in the state shall be and remain appurtenant to the
5 land or place upon which the same is used: PROVIDED, HOWEVER, That
6 the right may be transferred to another or to others and become
7 appurtenant to any other land or place of use without loss of
8 priority of right theretofore established if such change can be made
9 without detriment or injury to existing rights. The point of
10 diversion of water for beneficial use or the purpose of use may be
11 changed, if such change can be made without detriment or injury to
12 existing rights. A change in the place of use, point of diversion,
13 and/or purpose of use of a water right to enable irrigation of
14 additional acreage or the addition of new uses may be permitted if
15 such change results in no increase in the annual consumptive quantity
16 of water used under the water right. For purposes of this section,
17 "annual consumptive quantity" means the estimated or actual annual
18 amount of water diverted pursuant to the water right, reduced by the
19 estimated annual amount of return flows, averaged over the two years
20 of greatest use within the most recent five-year period of continuous
21 beneficial use of the water right. Before any transfer of such right
22 to use water or change of the point of diversion of water or change
23 of purpose of use can be made, any person having an interest in the
24 transfer or change, shall file a written application therefor with
25 the department, and the application shall not be granted until notice
26 of the application is published as provided in RCW 90.03.280. If it
27 shall appear that such transfer or such change may be made without
28 injury or detriment to existing rights, the department shall issue to
29 the applicant a certificate in duplicate granting the right for such
30 transfer or for such change of point of diversion or of use. The
31 certificate so issued shall be filed and be made a record with the
32 department and the duplicate certificate issued to the applicant may
33 be filed with the county auditor in like manner and with the same
34 effect as provided in the original certificate or permit to divert
35 water.

36 (2) If an application for change proposes to transfer water
37 rights from one irrigation district to another, the department shall,
38 before publication of notice, receive concurrence from each of the
39 irrigation districts that such transfer or change will not adversely

1 affect the ability to deliver water to other landowners or impair the
2 financial integrity of either of the districts.

3 (3) A change in place of use by an individual water user or users
4 of water provided by an irrigation district need only receive
5 approval for the change from the board of directors of the district
6 if the use of water continues within the irrigation district, and
7 when water is provided by an irrigation entity that is a member of a
8 board of joint control created under chapter 87.80 RCW, approval need
9 only be received from the board of joint control if the use of water
10 continues within the area of jurisdiction of the joint board and the
11 change can be made without detriment or injury to existing rights.

12 (4) This section shall not apply to trust water rights acquired
13 by 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 (5) A transfer of a seasonal irrigation water right to the trust
16 water rights program for the purpose of providing mitigation water to
17 a third party for year-round potable water supplies pursuant to
18 chapter 90.42 RCW may not be considered to cause impairment to
19 instream flows adopted under chapters 90.22 and 90.54 RCW as long as
20 transfer of the water for mitigation does not exceed the total use
21 and consumptive use that is available under the water right in the
22 trust water rights program.

23 (6)(a) Pending applications for new water rights are not entitled
24 to protection from impairment, injury, or detriment when an
25 application relating to an existing surface or ground water right is
26 considered.

27 (b) Applications relating to existing surface or ground water
28 rights may be processed and decisions on them rendered independently
29 of processing and rendering decisions on pending applications for new
30 water rights within the same source of supply without regard to the
31 date of filing of the pending applications for new water rights.

32 (c) Notwithstanding any other existing authority to process
33 applications, including but not limited to the authority to process
34 applications under WAC 173-152-050 as it existed on January 1, 2001,
35 an application relating to an existing surface or ground water right
36 may be processed ahead of a previously filed application relating to
37 an existing right when sufficient information for a decision on the
38 previously filed application is not available and the applicant for
39 the previously filed application is sent written notice that explains
40 what information is not available and informs the applicant that

1 processing of the next application will begin. The previously filed
2 application does not lose its priority date and if the information is
3 provided by the applicant within sixty days, the previously filed
4 application shall be processed at that time. This subsection (~~(5)~~)
5 (6)(c) does not affect any other existing authority to process
6 applications.

7 (d) Nothing in this subsection (~~(5)~~) (6) is intended to stop
8 the processing of applications for new water rights.

9 (~~(6)~~) (7) No applicant for a change, transfer, or amendment of
10 a water right may be required to give up any part of the applicant's
11 valid water right or claim to a state agency, the trust water rights
12 program, or to other persons as a condition of processing the
13 application.

14 (~~(7)~~) (8) In revising the provisions of this section and adding
15 provisions to this section by chapter 237, Laws of 2001, the
16 legislature does not intend to imply legislative approval or
17 disapproval of any existing administrative policy regarding, or any
18 existing administrative or judicial interpretation of, the provisions
19 of this section not expressly added or revised.

20 (~~(8)~~) (9) The development and use of a small irrigation
21 impoundment, as defined in RCW 90.03.370(8), does not constitute a
22 change or amendment for the purposes of this section. The exemption
23 expressly provided by this subsection shall not be construed as
24 requiring a change or transfer of any existing water right to enable
25 the holder of the right to store water governed by the right.

26 (~~(9)~~) (10)(a) The department may only approve an application
27 submitted after June 30, 2019, for an interbasin water rights
28 transfer after providing notice electronically to the board of county
29 commissioners in the county of origin upon receipt of an application.

30 (b) For the purposes of this subsection:

31 (i) "Interbasin water rights transfer" means a transfer of a
32 water right for which the proposed point of diversion is in a
33 different basin than the proposed place of beneficial use.

34 (ii) "County of origin" means the county from which a water right
35 is transferred or proposed to be transferred.

36 (c) This subsection applies to counties located east of the crest
37 of the Cascade mountains.

38 **Sec. 3.** RCW 90.42.120 and 2003 c 144 s 4 are each amended to
39 read as follows:

1 (1) The department shall transfer a water right or portion
2 thereof being administered for water banking purposes from the trust
3 water (~~((rights))~~) rights program to a third party upon occurrence of
4 all of the following:

5 (a) The department receives a request for transfer of a water
6 right or portion thereof currently administered by the department for
7 water banking purposes;

8 (b) The request is consistent with any previous review under RCW
9 90.03.380 of the water right and future temporary or permanent
10 beneficial uses;

11 (c) The request is consistent with any condition, limitation, or
12 agreement affecting the water right, including but not limited to any
13 trust water right transfer agreement executed at the time the water
14 right was transferred to the trust water rights program; and

15 (d) The request is accompanied by and is consistent with an
16 assignment of interest or portion thereof from a person or entity
17 retaining an interest in the trust water right or portion thereof to
18 the party requesting transfer of the water right or portion thereof.

19 (2) The priority date of the water right or portion thereof
20 transferred by the department from the trust water (~~((rights))~~)
21 rights program for water banking purposes shall be the priority date
22 of the underlying water right.

23 (3) The department shall issue documentation for that water right
24 or portion thereof to the new water right holder based on the
25 requirements applicable to the transfer of other water rights from
26 the trust water rights program. Such documentation shall include a
27 description of the property to which the water right will be
28 appurtenant after the water right or portion thereof is transferred
29 from the trust water (~~((rights))~~) rights program to a third party.

30 (4) The transfer of a seasonal irrigation water right or portion
31 thereof currently administered by the department for water banking
32 purposes to a third party for year-round potable water supplies may
33 not be considered to cause impairment to instream flows adopted under
34 chapters 90.22 and 90.54 RCW as long as transfer of the water for
35 mitigation does not exceed the total use and consumptive use that is
36 available under the water right in the trust water rights program.

37 (5) The department's decision on the transfer of a water right or
38 portion thereof from the trust water (~~((rights))~~) rights program for
39 water banking purposes may be appealed to the pollution control

1 hearings board under RCW 43.21B.230, or to a superior court
2 conducting a general adjudication under RCW 90.03.210.

3 NEW SECTION. **Sec. 4.** Section 1 of this act expires June 30,
4 2019.

5 NEW SECTION. **Sec. 5.** Section 2 of this act takes effect June
6 30, 2019.

7 NEW SECTION. **Sec. 6.** Except for section 2 of this act, this act
8 is necessary for the immediate preservation of the public peace,
9 health, or safety, or support of the state government and its
10 existing public institutions, and takes effect immediately.

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