

**ESB 5106** - H COMM AMD

By Committee on Agriculture & Natural Resources

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 90.03.380 and 2001 c 237 s 5 are each amended to read  
4 as follows:

5 (1) The right to the use of water which has been applied to a  
6 beneficial use in the state shall be and remain appurtenant to the land  
7 or place upon which the same is used: PROVIDED, HOWEVER, That the  
8 right may be transferred to another or to others and become appurtenant  
9 to any other land or place of use without loss of priority of right  
10 theretofore established if such change can be made without detriment or  
11 injury to existing rights. The point of diversion of water for  
12 beneficial use or the purpose of use may be changed, if such change can  
13 be made without detriment or injury to existing rights. A change in  
14 the place of use, point of diversion, and/or purpose of use of a water  
15 right to enable irrigation of additional acreage or the addition of new  
16 uses may be permitted if such change results in no increase in the  
17 annual consumptive quantity of water used under the water right. For  
18 purposes of this section, "annual consumptive quantity" means the  
19 estimated or actual annual amount of water diverted or withdrawn  
20 pursuant to the water right, reduced by the estimated annual amount of  
21 return flows, (~~averaged over the two years of greatest use within the~~  
22 ~~most recent five year period of continuous beneficial use of the water~~  
23 ~~right~~) in the year in which the largest volume of water was diverted  
24 or withdrawn for beneficial use under the right during the five years  
25 immediately preceding the date the holder of the water right applies  
26 for a change of the right to enable such an irrigation of additional  
27 acreage or such an addition of new uses or, if the water right has been  
28 held by the water right holder for less than five years on such date,  
29 in the year in which the largest volume of water was diverted or  
30 withdrawn for beneficial use under the right during the time the right

1 has been held by the water right holder. When an application for a  
2 change of a right to enable such an irrigation of additional acreage or  
3 such an addition of new uses is considered by the department, the  
4 department must determine the ownership of the entire right but is to  
5 evaluate only the portion of the right directly involved in the  
6 proposal to irrigate the additional acreage or to add the new uses in  
7 determining whether to approve or disapprove the change.

8 (2) Before any transfer of such right to use water or change of the  
9 point of diversion of water or change of purpose of use can be made,  
10 any person having an interest in the transfer or change, shall file a  
11 written application therefor with the department, and the application  
12 shall not be granted until notice of the application is published as  
13 provided in RCW 90.03.280. If it shall appear that such transfer or  
14 such change may be made without injury or detriment to existing rights,  
15 the department shall issue to the applicant a certificate in duplicate  
16 granting the right for such transfer or for such change of point of  
17 diversion or of use. The certificate so issued shall be filed and be  
18 made a record with the department and the duplicate certificate issued  
19 to the applicant may be filed with the county auditor in like manner  
20 and with the same effect as provided in the original certificate or  
21 permit to divert water.

22 ((+2)) (3) If an application for change proposes to transfer water  
23 rights from one irrigation district to another, the department shall,  
24 before publication of notice, receive concurrence from each of the  
25 irrigation districts that such transfer or change will not adversely  
26 affect the ability to deliver water to other landowners or impair the  
27 financial integrity of either of the districts.

28 ((+3)) (4) A change in place of use by an individual water user or  
29 users of water provided by an irrigation district need only receive  
30 approval for the change from the board of directors of the district if  
31 the use of water continues within the irrigation district, and when  
32 water is provided by an irrigation entity that is a member of a board  
33 of joint control created under chapter 87.80 RCW, approval need only be  
34 received from the board of joint control if the use of water continues  
35 within the area of jurisdiction of the joint board and the change can  
36 be made without detriment or injury to existing rights.

1       ~~((4))~~ (5) This section shall not apply to trust water rights  
2 acquired by the state through the funding of water conservation  
3 projects under chapter 90.38 RCW or RCW 90.42.010 through 90.42.070.

4       ~~((5))~~ (6)(a) Pending applications for new water rights are not  
5 entitled to protection from impairment, injury, or detriment when an  
6 application relating to an existing surface or ground water right is  
7 considered.

8       (b) Applications relating to existing surface or ground water  
9 rights may be processed and decisions on them rendered independently of  
10 processing and rendering decisions on pending applications for new  
11 water rights within the same source of supply without regard to the  
12 date of filing of the pending applications for new water rights.

13       (c) Notwithstanding any other existing authority to process  
14 applications, including but not limited to the authority to process  
15 applications under WAC 173-152-050 as it existed on January 1, 2001, an  
16 application relating to an existing surface or ground water right may  
17 be processed ahead of a previously filed application relating to an  
18 existing right when sufficient information for a decision on the  
19 previously filed application is not available and the applicant for the  
20 previously filed application is sent written notice that explains what  
21 information is not available and informs the applicant that processing  
22 of the next application will begin. The previously filed application  
23 does not lose its priority date and if the information is provided by  
24 the applicant within sixty days, the previously filed application shall  
25 be processed at that time. This subsection ~~((5))~~ (6)(c) does not  
26 affect any other existing authority to process applications.

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

29       ~~((6))~~ (7) No applicant for a change, transfer, or amendment of a  
30 water right may be required to give up any part of the applicant's  
31 valid water right or claim to a state agency, the trust water rights  
32 program, or to other persons as a condition of processing the  
33 application.

34       ~~((7))~~ (8) In revising the provisions of this section and adding  
35 provisions to this section by chapter 237, Laws of 2001, the  
36 legislature does not intend to imply legislative approval or

1 disapproval of any existing administrative policy regarding, or any  
2 existing administrative or judicial interpretation of, the provisions  
3 of this section not expressly added or revised.

4 (9) Notwithstanding any other provision of this section or RCW  
5 90.44.100, a water right to use surface or ground water that has been  
6 applied to any beneficial use within the general category of an  
7 agricultural use may be changed to another agricultural use, within the  
8 other limitations of the water right, under the following conditions:

9 (a) A change in the type of crop irrigated under an agricultural  
10 irrigation water right may be made without providing notice to the  
11 department and does not constitute a change in the purpose of use of  
12 the right;

13 (b) A change from one agricultural use to another agricultural use  
14 that does not involve a change in the season of use of the water may be  
15 made after notification to, but without the approval of, the  
16 department;

17 (c) A change from one agricultural use to another agricultural use  
18 that involves a change in the season of use of water may be made after  
19 providing notice and opportunity for review to the department as  
20 described in this subsection. For these changes, the water right  
21 holder shall give written notice to the department that includes  
22 information describing the proposed change and providing evidence of  
23 beneficial use of the right. The water right holder may proceed with  
24 the change unless the department notifies the water right holder within  
25 forty-five calendar days that the proposed change raises concerns  
26 regarding potential impairment to other water rights. The director may  
27 extend the forty-five day period by an additional thirty calendar days  
28 if notice is provided to the water right holder within the forty-five  
29 day period. The department shall operate under a rebuttable  
30 presumption of no impairment of other water rights if the season of use  
31 is proposed to be changed from a period that is more critical for other  
32 water rights and streamflows to a period that is less critical. If the  
33 department determines that the proposed change raises concerns  
34 regarding potential impairment to other water rights, the proposed  
35 change may not proceed under this subsection (9);

36 (d) The department's determination under (c) of this subsection is  
37 not appealable. For a change that is not allowed under (c) of this

1 subsection, the water right holder may subsequently apply for a change  
2 in right under subsection (1) of this section, RCW 90.03.390, or  
3 90.44.100, in which case the department shall make a full and normal  
4 determination and render an appealable decision under those statutes.  
5 In making such a decision, the department is not bound by its earlier  
6 determination and the earlier determination may not result in a  
7 presumption of impairment of any water right; and

8 (e) The general category of an agricultural use of water under this  
9 subsection (9) is composed of, but not limited to, the beneficial uses  
10 of water for agricultural irrigation; frost protection; watering  
11 livestock; processing agricultural commodities; dust suppression;  
12 cleaning of agricultural animals, equipment, and facilities; and  
13 confined animal feeding operations with applicable land use and water  
14 quality permits.

15 **Sec. 2.** RCW 90.44.050 and 1987 c 109 s 108 are each amended to  
16 read as follows:

17 (1) Except as provided in subsection (2) of this section, after  
18 June 6, 1945, no withdrawal of public ground waters of the state shall  
19 be begun, nor shall any well or other works for such withdrawal be  
20 constructed, unless an application to appropriate such waters has been  
21 made to the department and a permit has been granted by it as herein  
22 provided(~~(:—EXCEPT, HOWEVER, That)~~).

23 (2) Each of the following uses of public ground water is exempt  
24 from the permit requirements of subsection (1) of this section to the  
25 extent that the water is regularly used beneficially, and the right to  
26 use the water shall be entitled to a right equal to that established by  
27 a permit issued under the provisions of this chapter:

28 (a) Any withdrawal of public ground waters (~~(for stock watering~~  
29 ~~purposes, or~~) for the watering of a lawn or of a noncommercial garden  
30 not exceeding one-half acre in area(~~(, or)~~); and

31 (b) Except as provided in subsection (4) of this section, any  
32 withdrawal of public ground waters in an amount not exceeding five  
33 thousand gallons a day for:

34 (i) Single or group domestic uses (~~(in an amount not exceeding five~~  
35 ~~thousand gallons a day, or for an industrial purpose in an amount not~~  
36 ~~exceeding five thousand gallons a day, is and shall be exempt from the~~

1 ~~provisions of this section, but, to the extent that it is regularly~~  
2 ~~used beneficially, shall be entitled to a right equal to that~~  
3 ~~established by a permit issued under the provisions of this chapter:~~  
4 ~~PROVIDED, HOWEVER, That));~~

5 (ii) Stock watering purposes; or

6 (iii) An industrial purpose.

7 (3) However, the department from time to time may require the  
8 person or agency making any such small withdrawal to furnish  
9 information as to the means for and the quantity of that withdrawal(~~(+~~  
10 ~~PROVIDED, FURTHER, That)).~~ At the option of the party making  
11 withdrawals of ground waters of the state not exceeding five thousand  
12 gallons per day, applications under this section or declarations under  
13 RCW 90.44.090 may be filed and permits and certificates obtained in the  
14 same manner and under the same requirements as ~~((is))~~ provided in this  
15 chapter ~~((provided))~~ in the case of withdrawals in excess of five  
16 thousand gallons a day.

17 (4) Any withdrawal of water for stock watering purposes begun  
18 before the effective date of this section is exempt from the permit  
19 requirements of subsection (1) of this section to the maximum extent  
20 that water was withdrawn for those purposes under the right prior to  
21 the effective date of this section. Beginning on the effective date of  
22 this section, such a withdrawal begun before the effective date of this  
23 section continues to be exempt from the permit requirements of  
24 subsection (1) of this section for that maximum extent.

25 NEW SECTION. Sec. 3. This act is necessary for the immediate  
26 preservation of the public peace, health, or safety, or support of the  
27 state government and its existing public institutions, and takes effect  
28 immediately."

29 Correct the title.

EFFECT: For determining the "annual consumptive quantity,"  
strikes the authority to use the year of historic peak use and requires  
the quantity to be calculated during the year of peak diversion or

withdrawal in the five years before the application for change, or, if the right has been held for less than five years, during the period the right has been held by the water right holder. Expressly applies this authority and calculation to ground water rights. Regarding the use of water with the general category of an agricultural use: Limits the use for watering livestock in confined feeding operations to those with applicable land use and water quality permits; requires notification of the DOE for certain changes of uses within the category, and requires notice with the opportunity for DOE review, and certain information to be provided to the DOE, regarding changes that involve a change in the season of use of the water; establishes a 45-day period (that may be extended) for the DOE to determine that the proposal raises concerns regarding the potential impairment of other rights; and does not allow such a change without formal approval if the DOE makes such a determination. Expressly limits the stock-watering exemption to 5,000 gallons per day for new rights for stock-watering and grandfathers existing withdrawals of ground water for stock-watering from this limitation to the maximum extent of the withdrawals before the effective date of the amendment.

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