

---

**SUBSTITUTE SENATE BILL 5555**

---

**State of Washington                      62nd Legislature                      2011 Regular Session**

**By** Senate Environment, Water & Energy (originally sponsored by Senators Parlette, Hatfield, Morton, Honeyford, and Hewitt)

READ FIRST TIME 02/16/11.

1            AN ACT Relating to interbasin transfers of water rights; amending  
2 RCW 90.03.380 and 90.03.380; creating a new section; providing an  
3 effective date; and providing an expiration date.

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

5            NEW SECTION.    **Sec. 1.** The legislature finds that because it is  
6 increasingly difficult for water users to acquire new water rights,  
7 transfers are a valuable and necessary water management tool. The  
8 legislature further finds that interbasin water right transfers may  
9 impact the economic and social welfare of rural communities.  
10 Therefore, the legislature intends for the department of ecology to  
11 confer about the effects of a proposed interbasin water rights transfer  
12 with the board of commissioners in the county of origin before issuing  
13 a permit.

14            **Sec. 2.** RCW 90.03.380 and 2009 c 183 s 15 are each amended to read  
15 as follows:

16            (1) The right to the use of water which has been applied to a  
17 beneficial use in the state shall be and remain appurtenant to the land  
18 or place upon which the same is used:    PROVIDED, HOWEVER, That the

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

1 period of nonuse is not included in the most recent five-year period of  
2 continuous beneficial use for purposes of determining the annual  
3 consumptive quantity of water under this section.

4 (2) If an application for change proposes to transfer water rights  
5 from one irrigation district to another, the department shall, before  
6 publication of notice, receive concurrence from each of the irrigation  
7 districts that such transfer or change will not adversely affect the  
8 ability to deliver water to other landowners or impair the financial  
9 integrity of either of the districts.

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

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

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

25 (b) Applications relating to existing surface or ground water  
26 rights may be processed and decisions on them rendered independently of  
27 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, an  
33 application relating to an existing surface or ground water right may  
34 be processed ahead of a previously filed application relating to an  
35 existing right when sufficient information for a decision on the  
36 previously filed application is not available and the applicant for the  
37 previously filed application is sent written notice that explains what  
38 information is not available and informs the applicant that processing

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

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

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

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

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

28 (10)(a) The department may only approve an application submitted  
29 after the effective date of this section for an interbasin water rights  
30 transfer after conferring with the board of county commissioners in the  
31 county of origin regarding the effect the transfer will have on the  
32 county of origin.

33 (b) For the purposes of this subsection:

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

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

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

3        **Sec. 3.** RCW 90.03.380 and 2003 c 329 s 2 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 pursuant to the  
20 water right, reduced by the estimated annual amount of return flows,  
21 averaged over the two years of greatest use within the most recent  
22 five-year period of continuous beneficial use of the water right.  
23 Before any transfer of such right to use water or change of the point  
24 of diversion of water or change of purpose of use can be made, any  
25 person having an interest in the transfer or change, shall file a  
26 written application therefor with the department, and the application  
27 shall not be granted until notice of the application is published as  
28 provided in RCW 90.03.280. If it shall appear that such transfer or  
29 such change may be made without injury or detriment to existing rights,  
30 the department shall issue to the applicant a certificate in duplicate  
31 granting the right for such transfer or for such change of point of  
32 diversion or of use. The certificate so issued shall be filed and be  
33 made a record with the department and the duplicate certificate issued  
34 to the applicant may be filed with the county auditor in like manner  
35 and with the same effect as provided in the original certificate or  
36 permit to divert water.

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

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

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

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

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

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

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

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

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

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

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

22 (9)(a) The department may only approve an application submitted  
23 after the effective date of this section for an interbasin water rights  
24 transfer after conferring with the board of county commissioners in the  
25 county of origin regarding the effect the transfer will have on the  
26 county of origin.

27 (b) For the purposes of this subsection:

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

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

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

35 NEW SECTION. Sec. 4. Section 2 of this act expires June 30, 2019.

1        NEW SECTION.   **Sec. 5.**   Section 3 of this act takes effect June 30,  
2   2019.

--- END ---