

CERTIFICATION OF ENROLLMENT

ENGROSSED SUBSTITUTE SENATE BILL 5555

Chapter 112, Laws of 2011

62nd Legislature
2011 Regular Session

INTERBASIN WATER RIGHT TRANSFERS--NOTICE

EFFECTIVE DATE: 07/22/11 - Except section 3, which becomes effective 06/30/19.

Passed by the Senate March 4, 2011
YEAS 48 NAYS 0

BRAD OWEN

President of the Senate

Passed by the House April 6, 2011
YEAS 93 NAYS 0

FRANK CHOPP

Speaker of the House of Representatives

Approved April 18, 2011, 2:43 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5555** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

FILED

April 19, 2011

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5555

Passed Legislature - 2011 Regular Session

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 provide notice electronically of a proposed interbasin water rights
12 transfer to the board of commissioners in the county of origin before
13 issuing a change authorization.

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 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 water
34 right for which the proposed point of diversion is in a different basin
35 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.

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.

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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 providing notice electronically to the board of county
25 commissioners in the county of origin upon receipt of an application.

26 (b) For the purposes of this subsection:

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

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

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

34 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.

Passed by the Senate March 4, 2011.

Passed by the House April 6, 2011.

Approved by the Governor April 18, 2011.

Filed in Office of Secretary of State April 19, 2011.