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ENGROSSED SECOND SUBSTITUTE SENATE BILL 5219

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State of Washington

63rd Legislature

2013 Regular Session

**By** Senate Ways & Means (originally sponsored by Senators Honeyford, Hatfield, Smith, Schoesler, Delvin, and Hewitt)

READ FIRST TIME 03/01/13.

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

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

5       NEW SECTION. **Sec. 1.** The legislature finds that purchase of lands  
6 by state agencies for less intensive economic uses may affect the  
7 economic vitality of local communities by reducing essential water  
8 resources necessary to retain economic activity of the area. The  
9 legislature finds that a number of parcels of land purchased by state  
10 agencies have water rights appurtenant to them. The legislature  
11 continues to support agency efforts to allow continued use of portions  
12 of land parcels that contribute to the local economy by actions such as  
13 leasing back irrigated parcels to local producers for continued  
14 production of food and other agricultural commodities. The legislature  
15 finds that the economies in many rural areas of the state have declined  
16 and are in need of retaining water resources to prevent further  
17 decline.

18       The purpose of this act is to establish a process to retain water  
19 rights when they are no longer used on state purchased lands and to

1 make this resource available for alternate uses to continue to support  
2 the local economy, jobs, and the tax base rather than be permanently  
3 lost to the economy of the area through relinquishment under chapter  
4 90.14 RCW.

5 NEW SECTION. **Sec. 2.** A new section is added to chapter 90.42 RCW  
6 to read as follows:

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

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

34 (3) Water rights temporarily held by the department of ecology  
35 under this section shall be available for transfer to a new use or uses  
36 within the same WRIA as the original use, consistent with RCW 90.03.380  
37 or 90.44.100, as appropriate. Once a water right is transferred to the

1 local economy trust water account and the department has completed a  
2 trust water agreement and identified the area of suitability for  
3 transfer consistent with chapter 90.38 or 90.44 RCW, the department  
4 must provide notification that a water right may be available to the  
5 person who filed an application for a new water right under chapter  
6 90.03 or 90.44 RCW as appropriate, based on whose water right  
7 appropriation is next in line for processing within the area of  
8 suitability for transfer within the WRIA.

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

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

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

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

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

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

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

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

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

1 (10) This section does not apply to state lands as defined in RCW  
2 79.02.010, managed by the department of natural resources, or to state  
3 forest lands as defined in RCW 79.02.010.

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

7 NEW SECTION. **Sec. 3.** A new section is added to chapter 90.42 RCW  
8 to read as follows:

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

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

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

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

26 (b) The request is reviewed and approved under RCW 90.03.380 or  
27 90.44.100, as applicable, for the new beneficial use or uses. The  
28 department may not authorize the use of a water right if it causes  
29 detriment or injury to existing rights.

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

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

9 (6) The department's decision on the transfer of a water right or  
10 portion thereof from the local economy trust water account may be  
11 appealed to the pollution control hearings board under RCW 43.21B.230  
12 or to a superior court conducting a general adjudication under RCW  
13 90.03.210.

14 (7) Notice of application for transfer of a water right under this  
15 section must be published by the applicant as provided under RCW  
16 90.03.380. The department must provide electronic notice and  
17 opportunity to comment to affected local governments and affected  
18 federally recognized tribal governments before initiating use of the  
19 local economy trust water account for the first time in a WRIA.

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

23 (a) Waiting for a final determination from the department on a  
24 change or transfer application filed under RCW 90.03.250, 90.03.380, or  
25 90.44.100;

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

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

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