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**SENATE BILL 5628**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** Senators Torres, Rivers, and Muzzall

AN ACT Relating to the preservation of water rights for farmland and economic development; amending RCW 90.66.040 and 90.66.065; and declaring an emergency.

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

**Sec.**  RCW 90.66.040 and 2001 c 237 s 24 are each amended to read as follows:

For the purposes of this chapter, the following definitions shall be applicable:

(1) "Columbia-Snake river mainstem" means all water in the Lower Snake river Ice Harbor dam pool, and all groundwater within one mile of the Ice Harbor dam pool high water mark; and Columbia river within the ordinary high water mark of the main channel of the Columbia river between the border of the United States and Canada and the Bonneville dam, and all groundwater within one mile of the high water mark.

(2) "Family farm" means a geographic area including not more than six thousand acres of irrigated agricultural lands, whether contiguous or noncontiguous, the controlling interest in which is held by a person having a controlling interest in no more than six thousand acres of irrigated agricultural lands in the state of Washington which are irrigated under rights acquired after December 8, 1977.

((~~(2)~~)) (3) "Lower Snake river mainstem" means all water in the lower Snake river within the ordinary high water mark of the main channel of the lower Snake river from the head of Ice Harbor dam pool to the confluence of the Snake and Columbia rivers, and all groundwater within one mile of the high water mark.

(4) "Person" means any individual, corporation, partnership, limited partnership, organization, or other entity whatsoever, whether public or private. The term "person" shall include as one person all corporate or partnership entities with a common ownership of more than one-half of the assets of each of any number of such entities.

((~~(3)~~)) (5) "Controlling interest" means a property interest that can be transferred to another person, the percentage interest so transferred being sufficient to effect a change in control of the landlord's rights and benefits. Ownership of property held in trust shall not be deemed a controlling interest where no part of the trust has been established through expenditure or assignment of assets of the beneficiary of the trust and where the rights of the family farm permit which is a part of the trust cannot be transferred to another by the beneficiary of the trust under terms of the trust. Each trust of a separate donor origin shall be treated as a separate entity and the administration of property under trust shall not represent a controlling interest on the part of the trust officer.

((~~(4)~~)) (6) "Department" means the department of ecology of the state of Washington.

((~~(5)~~)) (7) "Application((~~",~~))," "permit," and "public waters" shall have the meanings attributed to these terms in chapters 90.03 and 90.44 RCW.

((~~(6)~~)) (8) "Public water entity" means any public or governmental entity with authority to administer and operate a system to supply water for irrigation of agricultural lands.

((~~(7)~~)) (9) "Transfer" means a transfer, change, or amendment to part or all of a water right authorized under RCW 90.03.380, 90.03.390, or 90.44.100 or chapter 90.80 RCW.

((~~(8)~~)) (10) "Withdraw" means to withdraw groundwater or to divert surface water.

**Sec.**  RCW 90.66.065 and 2001 c 237 s 23 are each amended to read as follows:

(1) Transfers of water rights established as family farm permits under this chapter may be approved as authorized under this section and under RCW 90.03.380, 90.03.390, or 90.44.100 or chapter 90.80 RCW as appropriate.

(2) A family farm permit may be transferred:

(a) For use for agricultural irrigation purposes as limited by RCW 90.66.060 (1) and (2);

(b) To any purpose of use that is a beneficial use of water if the transfer is made exclusively under a lease agreement, except that transfers for the use of water for agricultural irrigation purposes shall be limited as provided by RCW 90.66.060 (1) and (2);

(c) To any purpose of use that is a beneficial use of water if the water right is for the use of water at a location that is, at the time the transfer is approved, within the boundaries of an urban growth area designated under chapter 36.70A RCW or, in counties not planning under chapter 36.70A RCW, within a city or town or within areas designated for urban growth in comprehensive plans prepared under chapter 36.70 RCW, except that transfers for the use of water for agricultural irrigation purposes shall be limited as provided by RCW 90.66.060 (1) and (2).

(3) If a portion of the water governed by a water right established under the authority of a family farm permit is made surplus to the beneficial uses exercised under the right through the implementation of practices or technologies, including but not limited to conveyance practices or technologies, that are more water-use efficient than those under which the right was perfected, the right to use the surplus water may be transferred to any purpose of use that is a beneficial use of water. Nothing in this subsection authorizes: A transfer of the portion of a water right that is necessary for the production of crops historically grown under the right; or a transfer of a water right or a portion of a water right that has not been perfected through beneficial use before the transfer. Water right transfers approved under this subsection must be consistent with the provisions of RCW 90.03.380(1).

(4) Before a change in purpose of a family farm water permit to municipal supply purpose or domestic purpose may be authorized, the public water system that is receiving the family farm water permit must be meeting the water conservation requirements of its current water system plan approved by the department of health or its small water system management program.

(5) The place of use for a water right transferred under the authority of this section shall remain within: The water resource inventory area containing the place of use for the water right before the transfer; the Columbia-Snake river mainstem; the lower Snake river mainstem; or the urban growth area or contiguous urban growth areas of the place of use for the water right before the transfer if the urban growth area or contiguous urban growth areas cross boundaries of water resource inventory areas.

(6) The authority granted by this section to transfer or alter the purpose of use of a water right established under the authority of a family farm permit shall not be construed as limiting in any manner the authority granted by RCW 90.03.380, 90.03.390, or 90.44.100 to alter other elements of such a water right.

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

**--- END ---**