
HOUSE BILL 1789

State of Washington

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By Representatives Chandler, Mastin, Clements, Crouse, Hankins, Skinner, Horn, Schoesler, Grant and Honeyford

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1 AN ACT Relating to water rights transfers and market transactions;
2 amending RCW 90.03.380, 90.03.383, and 90.03.390; adding new sections
3 to chapter 90.54 RCW; and adding a new section to chapter 90.14 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 90.54 RCW
6 to read as follows:

7 It is the intent of the legislature that existing administrative,
8 legal, and economic barriers to the voluntary marketability and
9 transferability of water rights be removed. Water rights transfers
10 will be an important water management tool to meet existing and future
11 water resource demands and will result in more efficient use of water
12 resources, benefitting both the buyer and the seller. The legislature
13 recognizes that water rights, like other property rights, are
14 alienable, and that water rights should become freely marketable and
15 transferable to other locations and uses. Water rights held in trust
16 should also be marketable, subject to the provisions of RCW 90.03.380.
17 The legislature also finds that conservation of water is a resource in
18 itself, and that the transfer of conserved water to other locations and
19 uses serves as a water allocation mechanism. Used effectively, the

1 voluntary transfer of water rights could: (1) Allow the creation of
2 additional multi-use water storage facilities; (2) alleviate water
3 shortages; (3) save capital outlays; (4) reduce development costs; (5)
4 provide an incentive for investment in water conservation efforts by
5 water right holders; and (6) provide significant environmental
6 benefits.

7 NEW SECTION. **Sec. 2.** A new section is added to chapter 90.54 RCW
8 to read as follows:

9 "Water right transfer" or "transfer" means any voluntary
10 transaction for consideration, carried out in accordance with the
11 provisions of this chapter, in which there is a temporary or permanent
12 change in the place of diversion, place of use, source of supply, time
13 of use, period of use, place of storage, or the purpose of use of all
14 or part of the water to which any person is entitled by reason of
15 owning or holding a water right. The term water right transfer or
16 transfer includes, a sale, lease, or exchange of water rights, an
17 agreement not to exercise a water right, the sale of water conserved by
18 a present user, or any other transaction that permits water rights to
19 be transferred from one use to another for consideration. The term
20 water right transfer or transfer includes the transfer of rights or the
21 exchange or delivery of water between public water systems through an
22 "intertie."

23 Conserved water is that part of a ground or surface water right
24 that is made surplus to the beneficial uses exercised under the right,
25 through a change in the practices or activities under which the right
26 was perfected.

27 NEW SECTION. **Sec. 3.** A new section is added to chapter 90.54 RCW
28 to read as follows:

29 Conserved water may be transferred without limitation as provided
30 in section 2 of this act. A water right proposed for transfer, that
31 includes water other than conserved water, may not be permanently sold,
32 and is subject to transfer for a specific term.

33 **Sec. 4.** RCW 90.03.380 and 1991 c 347 s 15 are each amended to read
34 as follows:

35 (1)(a) The right to the use of water which has been applied to a
36 beneficial use in the state shall be and remain appurtenant to the land

1 or place upon which the same is used: PROVIDED, HOWEVER, That said
2 right may be transferred to another or to others and become appurtenant
3 to any other land or place of use without loss of priority of right
4 theretofore established if such change can be made without detriment or
5 injury to existing rights. The point of diversion of water for
6 beneficial use or the purpose of use may be changed, if such change can
7 be made without detriment or injury to existing rights.

8 (b) An existing right that is in the status of an undeveloped
9 permit that is not being supplied at the time appropriation or
10 subsequent beneficial use is not subject to injury or detriment by a
11 transfer of water rights.

12 (c) Conserved water is subject to transfer and other existing water
13 rights holders may not claim injury or detriment if the conserved water
14 was obtained by efficiency measures, the water from which the conserved
15 water was reclaimed was put to beneficial use, and the conserved water
16 was not available to other water rights holders as return flow.

17 (d) Before any transfer of such right to use water or change of the
18 point of diversion of water or change of purpose of use can be made,
19 any person having an interest in the transfer or change, shall file a
20 written application therefor with the department, and said application
21 shall not be granted until notice of said application shall be
22 published as provided in RCW 90.03.280. If it shall appear that such
23 transfer or such change may be made without injury or detriment to
24 existing rights, the department shall issue to the applicant a
25 certificate in duplicate granting the right for such transfer or for
26 such change of point of diversion or of use. The certificate so issued
27 shall be filed and be made a record with the department and the
28 duplicate certificate issued to the applicant may be filed with the
29 county auditor in like manner and with the same effect as provided in
30 the original certificate or permit to divert water.

31 (2)(a) If an application for change proposes to transfer water
32 rights from one irrigation district to another, the department
33 ((shall)) must, before publication of notice, receive ((concurrence))
34 approval from each of the irrigation districts that such transfer or
35 change will not adversely affect the ability to deliver water to other
36 landowners or impair the financial integrity of either of the
37 districts.

1 (b) Irrigation districts may transfer conserved water within and
2 outside of the district if the conserved water meets the criteria in
3 subsection (1)(c) of this section.

4 (c) A change in place of use by an individual water user or users
5 of water provided by an irrigation district need only receive approval
6 for the change from the board of directors of the district if the use
7 of water continues within the irrigation district.

8 (d) The department may not require that irrigation water rights
9 transfers be conditioned on the transferor reducing his or her
10 irrigated acreage.

11 (3) This section shall not apply to trust water rights acquired by
12 the state through the funding of water conservation projects under
13 chapter 90.38 RCW or RCW 90.42.010 through 90.42.070.

14 (4) The department may not initiate relinquishment proceedings
15 under chapter 90.14 RCW as a result of information gained solely
16 through a proposed water rights transfer under this section.

17 (5) The department of ecology may not initiate relinquishment
18 proceedings under chapter 90.14 RCW on the grounds that an irrigation
19 district holding a water right in trust for the benefit of land owners
20 within the district has not put all of the water authorized in the
21 permit to beneficial use.

22 (6) There shall be no relinquishment of all or any part of a water
23 right when any water right holder fails to use all of the water that
24 the holder is entitled to use under an appropriative water right
25 because of water conservation efforts financed by such holder. Any
26 reduction in the use of such appropriated water because of such
27 conservation efforts shall be deemed equivalent to a reasonable
28 beneficial use of water by the holder to the full extent of the
29 reduction in use resulting from the conservation effort. A water right
30 holder shall have the right to apply conserved water to any other
31 beneficial use of the holder, or to sell, convey, exchange, or transfer
32 any conserved water for beneficial use by another.

33 (7) The provisions of RCW 90.03.290 do not apply to transfers or
34 changes made under this section.

35 NEW SECTION. Sec. 5. A new section is added to chapter 90.14 RCW
36 to read as follows:

1 The department may not initiate relinquishment proceedings under
2 this chapter as a result of information gained solely through a
3 proposed water rights transfer under RCW 90.03.380.

4 **Sec. 6.** RCW 90.03.383 and 1991 c 350 s 1 are each amended to read
5 as follows:

6 (1) The legislature recognizes the value of interties for improving
7 the reliability of public water systems, enhancing their management,
8 and more efficiently utilizing the increasingly limited resource.
9 Given the continued growth in the most populous areas of the state, the
10 increased complexity of public water supply management, and the trend
11 toward regional planning and regional solutions to resource issues,
12 interconnections of public water systems through interties provide a
13 valuable tool to ensure reliable public water supplies for the citizens
14 of the state. Public water systems have been encouraged in the past to
15 utilize interties to achieve public health and resource management
16 objectives. The legislature finds that it is in the public interest to
17 recognize interties existing and in use as of January 1, 1991, and to
18 have associated water rights modified by the department of ecology to
19 reflect current use of water through those interties, pursuant to
20 subsection (3) of this section. The legislature further finds it in
21 the public interest to develop a coordinated process to review
22 proposals for interties commencing use after January 1, 1991.

23 (2) For the purposes of this section, the following definitions
24 shall apply:

25 (a) "Interties" are interconnections between public water systems
26 permitting exchange, acquisition, or delivery of wholesale and/or
27 retail water between those systems for other than emergency supply
28 purposes, where such exchange, acquisition, or delivery is within
29 established instantaneous and annual withdrawal rates specified in the
30 systems' existing water right permits or certificates, or contained in
31 claims filed pursuant to chapter 90.14 RCW, and which results in better
32 management of public water supply consistent with existing rights and
33 obligations. Interties include interconnections between public water
34 systems permitting exchange, acquisition, or delivery of water to serve
35 as primary or secondary sources of supply(~~(, but do not include~~
36 ~~development of new sources of supply to meet future demand)~~).

37 (b) "Service area" is the area designated as the wholesale and/or
38 retail area in a water system plan or a coordinated water system plan

1 pursuant to chapter 43.20 or 70.116 RCW respectively. When a public
2 water system does not have a designated service area subject to the
3 approval process of those chapters, the service area shall be the
4 designated place of use contained in the water right permit or
5 certificate, or contained in the claim filed pursuant to chapter 90.14
6 RCW.

7 (3) Public water systems with interties existing and in use as of
8 January 1, 1991, or that have received written approval from the
9 department of health prior to that date, shall file written notice of
10 those interties with the department of health and the department of
11 ecology. The notice may be incorporated into the public water system's
12 five-year update of its water system plan, but shall be filed no later
13 than June 30, 1996. The notice shall identify the location of the
14 intertie; the dates of its first use; the purpose, capacity, and
15 current use; the intertie agreement of the parties and the service
16 areas assigned; and other information reasonably necessary to modify
17 the public water system's water right (~~(permit)~~). Notwithstanding the
18 provisions of RCW 90.03.380 and 90.44.100, for public water systems
19 with interties existing and in use or with written approval as of
20 January 1, 1991, the department of ecology, upon receipt of notice
21 meeting the requirements of this subsection, shall, as soon as
22 practicable, modify the place of use descriptions in the water right
23 permits, certificates, or claims to reflect the actual use through such
24 interties, provided that the place of use is within service area
25 designations established in a water system plan approved pursuant to
26 chapter 43.20 RCW, or a coordinated water system plan approved pursuant
27 to chapter 70.116 RCW, and further provided that the water used is
28 within the instantaneous and annual withdrawal rates specified in the
29 water rights (~~(permit)~~) and that no outstanding complaints of
30 impairment to existing water rights have been filed with the department
31 of ecology prior to September 1, 1991. Where such complaints of
32 impairment have been received, the department of ecology shall make all
33 reasonable efforts to resolve them in a timely manner through agreement
34 of the parties or through available administrative remedies.

35 (4) Notwithstanding the provisions of RCW 90.03.380 and 90.44.100,
36 exchange, acquisition, or delivery of water through interties approved
37 by the department of health commencing use after January 1, 1991, shall
38 be permitted when the intertie improves overall system reliability,
39 enhances the manageability of the systems, provides opportunities for

1 conjunctive use, or delays or avoids the need to develop new water
2 sources, and otherwise meets the requirements of this section, provided
3 that each public water system's water use shall not exceed the
4 instantaneous or annual withdrawal rate specified in its water right
5 authorization, shall not adversely affect existing water rights, and
6 shall not be inconsistent with state-approved plans such as water
7 system plans or other plans which include specific proposals for
8 construction of interties. Interties approved and commencing use after
9 January 1, 1991, shall not be inconsistent with regional water resource
10 plans developed pursuant to chapter 90.54 RCW.

11 (5) For public water systems subject to the approval process of
12 chapter 43.20 RCW or chapter 70.116 RCW, proposals for interties
13 commencing use after January 1, 1991, shall be incorporated into water
14 system plans pursuant to chapter 43.20 RCW or coordinated water system
15 plans pursuant to chapter 70.116 RCW and submitted to the department of
16 health and the department of ecology for review and approval as
17 provided for in subsections (5) through (9) of this section. The plan
18 shall state how the proposed intertie will improve overall system
19 reliability, enhance the manageability of the systems, provide
20 opportunities for conjunctive use, or delay or avoid the need to
21 develop new water sources.

22 (6) The department of health shall be responsible for review and
23 approval of proposals for new interties. In its review the department
24 of health shall determine whether the intertie satisfies the criteria
25 of subsection (4) of this section, with the exception of water rights
26 considerations, which are the responsibility of the department of
27 ecology, and shall determine whether the intertie is necessary to
28 address emergent public health or safety concerns associated with
29 public water supply.

30 (7) If the intertie is determined by the department of health to be
31 necessary to address emergent public health or safety concerns
32 associated with public water supply, the public water system shall
33 amend its water system plan as required and shall file an application
34 with the department of ecology to change its existing water right to
35 reflect the proposed use of the water as described in the approved
36 water system plan. The department of ecology shall process the
37 application for change pursuant to RCW 90.03.380 or 90.44.100 as
38 appropriate, except that, notwithstanding the requirements of those
39 sections regarding notice and protest periods, applicants shall be

1 required to publish notice one time, and the comment period shall be
2 fifteen days from the date of publication of the notice. Within sixty
3 days of receiving the application, the department of ecology shall
4 issue findings and advise the department of health if existing water
5 rights are determined to be adversely affected. If no determination is
6 provided by the department of ecology within the sixty-day period, the
7 department of health shall proceed as if existing rights are not
8 adversely affected by the proposed intertie. The department of ecology
9 may obtain an extension of the sixty-day period by submitting written
10 notice to the department of health and to the applicant indicating a
11 definite date by which its determination will be made. No additional
12 extensions shall be granted, and in no event shall the total review
13 period for the department of ecology exceed one hundred eighty days.

14 (8) If the department of health determines the proposed intertie
15 appears to meet the requirements of subsection (4) of this section but
16 is not necessary to address emergent public health or safety concerns
17 associated with public water supply, the department of health shall
18 instruct the applicant to submit to the department of ecology an
19 application for change to the underlying water right or claim as
20 necessary to reflect the new place of use. The department of ecology
21 shall consider the applications pursuant to the provisions of RCW
22 90.03.380 and 90.44.100 as appropriate. The department of ecology
23 shall not deny or limit a change of place of use for an intertie on the
24 grounds that the holder of a permit has not yet put all of the water
25 authorized in the permit to beneficial use. If in its review of
26 proposed interties and associated water rights the department of
27 ecology determines that additional information is required to act on
28 the application, the department may request applicants to provide
29 information necessary for its decision, consistent with agency rules
30 and written guidelines. Parties disagreeing with the decision of the
31 department of ecology on the application for change in place of use may
32 appeal the decision to the pollution control hearings board.

33 (9) The department of health may approve plans containing intertie
34 proposals prior to the department of ecology's decision on the water
35 right application for change in place of use. However, notwithstanding
36 such approval, construction work on the intertie shall not begin until
37 the department of ecology issues the appropriate water right document
38 to the applicant consistent with the approved plan.

1 **Sec. 7.** RCW 90.03.390 and 1991 c 350 s 3 are each amended to read
2 as follows:

3 RCW 90.03.380 shall not be construed to prevent water users from
4 making a seasonal or temporary change of point of diversion or place of
5 use of water when such change can be made without detriment or injury
6 to existing rights(~~(, but in no case shall such change be made without~~
7 ~~the permission of the water master of the district in which such~~
8 ~~proposed change is located, or of the department)~~). Nor shall RCW
9 90.03.380 be construed to prevent construction of emergency interties
10 between public water systems to permit exchange of water during short-
11 term emergency situations, or rotation in the use of water for bringing
12 about a more economical use of the available supply, provided however,
13 that the department of health in consultation with the department of
14 ecology shall adopt rules or develop written guidelines setting forth
15 standards for determining when a short-term emergency exists and the
16 circumstances in which emergency interties are permitted. The rules or
17 guidelines shall be consistent with the procedures established in RCW
18 43.83B.400 through 43.83B.420.

19 The request for seasonal or temporary change must be made to the
20 department in a manner that the department prescribes and approval must
21 be granted prior to the change being made. The request need not comply
22 with the full information and newspaper publication requirements of RCW
23 90.03.380 and no certificate of change is to issue.

24 A request that proposes to change use of water from one irrigation
25 district to another must receive concurrence from each of the
26 irrigation districts that such change will not adversely affect the
27 ability to deliver water to other landowners or impair the financial
28 integrity of the districts, before department action is taken.

29 A change in place of use by an individual water user or users of
30 water provided by an irrigation district need only receive approval for
31 the change from the board of directors of the district if the use of
32 water continues within the irrigation district.

33 Water users owning lands to which water rights are attached may
34 rotate in the use of water to which they are collectively entitled, or
35 an individual water user having lands to which are attached water
36 rights of a different priority, may in like manner rotate in use when

1 such rotation can be made without detriment to other existing water
2 rights, and has the approval of the ((~~water master or~~)) department.

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