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HOUSE BILL 1957

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State of Washington

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By Representatives G. Chandler, Linville, Mastin, Reardon, Sump, Schoesler and Ericksen

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1 AN ACT Relating to water right transfers, changes, and amendments;  
2 amending RCW 90.03.290, 90.03.380, 90.03.390, 90.44.100, 90.80.010,  
3 90.80.040, and 90.80.120; and adding a new section to chapter 90.03  
4 RCW.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 90.03 RCW  
7 to read as follows:

8 The department is authorized to process and render decisions on  
9 applications for change or transfer under this chapter and amendments  
10 of ground water rights under chapter 90.44 RCW as a matter of higher  
11 priority than processing and rendering decisions on applications for  
12 new water rights. Any application for a new water right for which a  
13 permit decision has not been made by the department at the time a  
14 transfer, change, or amendment is approved shall not be considered an  
15 existing water right subject to analysis as to whether the application  
16 may be injured, impaired, or detrimentally affected by the transfer or  
17 change.

1       **Sec. 2.** RCW 90.03.290 and 1994 c 264 s 84 are each amended to read  
2 as follows:

3       When an application complying with the provisions of this chapter  
4 and with the rules and regulations of the department has been filed,  
5 the same shall be placed on record with the department, and it shall be  
6 its duty to investigate the application, and determine what water, if  
7 any, is available for appropriation, and find and determine to what  
8 beneficial use or uses it can be applied. If it is proposed to  
9 appropriate water for irrigation purposes, the department shall  
10 investigate, determine and find what lands are capable of irrigation by  
11 means of water found available for appropriation. If it is proposed to  
12 appropriate water for the purpose of power development, the department  
13 shall investigate, determine and find whether the proposed development  
14 is likely to prove detrimental to the public interest, having in mind  
15 the highest feasible use of the waters belonging to the public. If the  
16 application does not contain, and the applicant does not promptly  
17 furnish sufficient information on which to base such findings, the  
18 department may issue a preliminary permit, for a period of not to  
19 exceed three years, requiring the applicant to make such surveys,  
20 investigations, studies, and progress reports, as in the opinion of the  
21 department may be necessary. If the applicant fails to comply with the  
22 conditions of the preliminary permit, it and the application or  
23 applications on which it is based shall be automatically canceled and  
24 the applicant so notified. If the holder of a preliminary permit  
25 shall, before its expiration, file with the department a verified  
26 report of expenditures made and work done under the preliminary permit,  
27 which, in the opinion of the department, establishes the good faith,  
28 intent and ability of the applicant to carry on the proposed  
29 development, the preliminary permit may, with the approval of the  
30 governor, be extended, but not to exceed a maximum period of five years  
31 from the date of the issuance of the preliminary permit. The  
32 department shall make and file as part of the record in the matter,  
33 written findings of fact concerning all things investigated, and if it  
34 shall find that there is water available for appropriation for a  
35 beneficial use, and the appropriation thereof as proposed in the  
36 application will not impair existing rights or be detrimental to the  
37 public welfare, it shall issue a permit stating the amount of water to  
38 which the applicant shall be entitled and the beneficial use or uses to  
39 which it may be applied: PROVIDED, That where the water applied for is

1 to be used for irrigation purposes, it shall become appurtenant only to  
2 such land as may be reclaimed thereby to the full extent of the soil  
3 for agricultural purposes. But where there is no unappropriated water  
4 in the proposed source of supply, or where the proposed use conflicts  
5 with existing rights, or threatens to prove detrimental to the public  
6 interest, having due regard to the highest feasible development of the  
7 use of the waters belonging to the public, it shall be duty of the  
8 department to reject such application and to refuse to issue the permit  
9 asked for. If the permit is refused because of conflict with existing  
10 rights and such applicant shall acquire same by purchase or  
11 condemnation under RCW 90.03.040, the department may thereupon grant  
12 such permit. Any application may be approved for a less amount of  
13 water than that applied for, if there exists substantial reason  
14 therefor, and in any event shall not be approved for more water than  
15 can be applied to beneficial use for the purposes named in the  
16 application. In determining whether or not a permit shall issue upon  
17 any application, it shall be the duty of the department to investigate  
18 all facts relevant and material to the application. After the  
19 department approves said application in whole or in part and before any  
20 permit shall be issued thereon to the applicant, such applicant shall  
21 pay the fee provided in RCW 90.03.470: PROVIDED FURTHER, That in the  
22 event a permit is issued by the department upon any application, it  
23 shall be its duty to notify the director of fish and wildlife of such  
24 issuance.

25 This section does not apply to transfers, changes, or amendments to  
26 existing water rights made under RCW 90.03.380, 90.03.390, or  
27 90.44.100.

28 **Sec. 3.** RCW 90.03.380 and 1997 c 442 s 801 are each amended to  
29 read as follows:

30 (1) The right to the use of water which has been applied to a  
31 beneficial use in the state shall be and remain appurtenant to the land  
32 or place upon which the same is used: PROVIDED, HOWEVER, That the  
33 right may be transferred to another or to others and become appurtenant  
34 to any other land or place of use without loss of priority of right  
35 theretofore established if such change can be made without detriment or  
36 injury to existing rights. The point of diversion of water for  
37 beneficial use or the purpose of use may be changed, if such change can  
38 be made without detriment or injury to existing rights. A change in

1 the place of use, point of diversion, and/or purpose of use of a water  
2 right to enable irrigation of additional acreage or the addition of new  
3 uses may be permitted if such change results in no increase in the  
4 annual consumptive quantity of water used under the water right. For  
5 purposes of this section, "annual consumptive quantity" means the  
6 estimated or actual annual amount of water diverted pursuant to the  
7 water right, reduced by the estimated annual amount of return flows,  
8 averaged over the most recent five-year period of continuous beneficial  
9 use of the water right. Before any transfer of such right to use water  
10 or change of the point of diversion of water or change of purpose of  
11 use can be made, any person having an interest in the transfer or  
12 change, shall file a written application therefor with the department  
13 and with the water conservancy board created under chapter 90.80 RCW  
14 within the jurisdictional boundaries of which the place of use of the  
15 right to be transferred or changed is located, and the application  
16 shall not be granted until notice of the application is published as  
17 provided in RCW 90.03.280. If it shall appear that such transfer or  
18 such change may be made without injury or detriment to existing rights,  
19 the department shall issue to the applicant a certificate in duplicate  
20 granting the right for such transfer or for such change of point of  
21 diversion or of use. The certificate so issued shall be filed and be  
22 made a record with the department and the duplicate certificate issued  
23 to the applicant may be filed with the county auditor in like manner  
24 and with the same effect as provided in the original certificate or  
25 permit to divert water.

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

32 (3) A change in place of use by an individual water user or users  
33 of water provided by an irrigation district need only receive approval  
34 for the change from the board of directors of the district if the use  
35 of water continues within the irrigation district, and when water is  
36 provided by an irrigation entity that is a member of a board of joint  
37 control created under chapter 87.80 RCW, approval need only be received  
38 from the board of joint control if the use of water continues within

1 the area of jurisdiction of the joint board and the change can be made  
2 without detriment or injury to existing rights.

3 (4) Each application for a change or transfer filed under this  
4 section shall be reviewed by the water conservancy board created under  
5 chapter 90.80 RCW within the jurisdictional boundaries of which the  
6 place of use of the right to be transferred or changed is located. The  
7 department shall conduct its review of the change or transfer under  
8 this section only if the board submits a report and a proposed  
9 certificate conditionally approving the transfer or change under RCW  
10 90.80.080. Decisions on applications shall be made by the board in the  
11 order in which the applications are filed with it. The department  
12 shall make decisions regarding the proposed certificates filed with it  
13 by a board under RCW 90.80.080 in the order in which such certificates  
14 are filed with the department by that board.

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

18 **Sec. 4.** RCW 90.03.390 and 1991 c 350 s 3 are each amended to read  
19 as follows:

20 RCW 90.03.380 shall not be construed to prevent water users from  
21 making a seasonal or temporary change of point of diversion or place of  
22 use of water when such change can be made without detriment to existing  
23 rights, but in no case shall such change be made without the permission  
24 of the water master of the district in which such proposed change is  
25 located, or of the department. Nor shall RCW 90.03.380 be construed to  
26 prevent construction of emergency interties between public water  
27 systems to permit exchange of water during short-term emergency  
28 situations, or rotation in the use of water for bringing about a more  
29 economical use of the available supply, provided however, that the  
30 department of health in consultation with the department of ecology  
31 shall adopt rules or develop written guidelines setting forth standards  
32 for determining when a short-term emergency exists and the  
33 circumstances in which emergency interties are permitted. The rules or  
34 guidelines shall be consistent with the procedures established in RCW  
35 43.83B.400 through 43.83B.420. Water users owning lands to which water  
36 rights are attached may rotate in the use of water to which they are  
37 collectively entitled, or an individual water user having lands to  
38 which are attached water rights of a different priority, may in like

1 manner rotate in use when such rotation can be made without detriment  
2 to other existing water rights, and has the approval of the water  
3 master or department.

4 Any application for a change or transfer filed under this section  
5 shall be reviewed by the water conservancy board created under chapter  
6 90.80 RCW within the jurisdictional boundaries of which the place of  
7 use of the right to be transferred or changed is located. The  
8 department shall conduct its review of the change or transfer only if  
9 the board submits a report and a proposed certificate conditionally  
10 approving the transfer or change under RCW 90.80.080. Decisions on  
11 applications shall be made by the board in the order in which the  
12 applications are filed with it. The department shall make decisions  
13 regarding the proposed certificates filed with it by a board under RCW  
14 90.80.080 in the order in which such certificates are filed with the  
15 department by that board.

16 **Sec. 5.** RCW 90.44.100 and 1997 c 316 s 2 are each amended to read  
17 as follows:

18 (1) After an application to, and upon the issuance by the  
19 department of an amendment to the appropriate permit or certificate of  
20 ground water right, the holder of a valid right to withdraw public  
21 ground waters may, without losing the holder's priority of right,  
22 construct wells or other means of withdrawal at a new location in  
23 substitution for or in addition to those at the original location, or  
24 the holder may change the manner or the place of use of the water.

25 (2) An amendment to construct replacement or a new additional well  
26 or wells at a location outside of the location of the original well or  
27 wells or to change the manner or place of use of the water shall be  
28 issued only after publication of notice of the application and findings  
29 as prescribed in the case of an original application. Such amendment  
30 shall be issued by the department only on the conditions that: (a) The  
31 additional or replacement well or wells shall tap the same body of  
32 public ground water as the original well or wells; (b) where a  
33 replacement well or wells is approved, the use of the original well or  
34 wells shall be discontinued and the original well or wells shall be  
35 properly decommissioned as required under chapter 18.104 RCW; (c) where  
36 an additional well or wells is constructed, the original well or wells  
37 may continue to be used, but the combined total withdrawal from the  
38 original and additional well or wells shall not enlarge the right

1 conveyed by the original permit or certificate; and (d) other existing  
2 rights shall not be impaired. The department may specify an approved  
3 manner of construction and shall require a showing of compliance with  
4 the terms of the amendment, as provided in RCW 90.44.080 in the case of  
5 an original permit.

6 (3) The construction of a replacement or new additional well or  
7 wells at the location of the original well or wells shall be allowed  
8 without application to the department for an amendment. However, the  
9 following apply to such a replacement or new additional well: (a) The  
10 well shall tap the same body of public ground water as the original  
11 well or wells; (b) if a replacement well is constructed, the use of the  
12 original well or wells shall be discontinued and the original well or  
13 wells shall be properly decommissioned as required under chapter 18.104  
14 RCW; (c) if a new additional well is constructed, the original well or  
15 wells may continue to be used, but the combined total withdrawal from  
16 the original and additional well or wells shall not enlarge the right  
17 conveyed by the original water use permit or certificate; (d) the  
18 construction and use of the well shall not interfere with or impair  
19 water rights with an earlier date of priority than the water right or  
20 rights for the original well or wells; (e) the replacement or  
21 additional well shall be located no closer than the original well to a  
22 well it might interfere with; (f) the department may specify an  
23 approved manner of construction of the well; and (g) the department  
24 shall require a showing of compliance with the conditions of this  
25 subsection (3).

26 (4) A copy of each amendment filed under this section shall be  
27 filed with the water conservancy board created under chapter 90.80 RCW  
28 within the jurisdictional boundaries of which the place of use of the  
29 right to be amended is located. The application shall be reviewed by  
30 the board created under chapter 90.80 RCW. The department shall  
31 conduct its review of the amendment only if the board submits a report  
32 and a proposed certificate conditionally approving the amendment under  
33 RCW 90.80.080. Decisions on applications shall be made by the board in  
34 the order in which the applications are filed with it. The department  
35 shall make decisions regarding the proposed certificates filed with it  
36 by a board under RCW 90.80.080 in the order in which such certificates  
37 are filed with the department by that board.

38 (5) As used in this section, the "location of the original well or  
39 wells" is the area described as the point of withdrawal in the original

1 public notice published for the application for the water right for the  
2 well.

3 **Sec. 6.** RCW 90.80.010 and 1997 c 441 s 2 are each amended to read  
4 as follows:

5 The following definitions apply throughout this chapter, unless the  
6 context clearly requires otherwise.

7 (1) "Board" means a water conservancy board created under this  
8 chapter.

9 (2) "Commissioner" means a member of a water conservancy board.

10 (3) "Department" means the department of ecology.

11 (4) "Director" means the director of the department of ecology.

12 (5) "Transfer" means a transfer, change, or amendment to a water  
13 right referred to in RCW 90.03.380, 90.03.390, or 90.44.100.

14 **Sec. 7.** RCW 90.80.040 and 1997 c 441 s 5 are each amended to read  
15 as follows:

16 The director of the department may, as deemed necessary by the  
17 director, adopt rules in accordance with chapter 34.05 RCW necessary to  
18 carry out this chapter, including minimum requirements for the training  
19 and continuing education of commissioners. Training courses for  
20 commissioners shall include an overview of state water law and  
21 hydrology. The training courses shall be provided by or through the  
22 department. Prior to commissioners taking action on proposed water  
23 right transfers, the commissioners shall comply with training  
24 requirements that include state water law and hydrology.

25 **Sec. 8.** RCW 90.80.120 and 1997 c 441 s 16 are each amended to read  
26 as follows:

27 (1) A commissioner of a water conservancy board who has or is  
28 proposed to have an ownership interest in a water right subject to an  
29 application for approval of a transfer or change by the board, shall  
30 not participate in the board's review or decision upon the application.

31 (2) A commissioner of a water conservancy board who also serves as  
32 an employee or upon the governing body of a municipally owned water  
33 system, shall not participate in the board's review or decision upon an  
34 application for the transfer or change of a water right in which that  
35 water system has or is proposed to have an ownership interest.

1       (3) If two or more applications for transfers or changes are  
2 pending before the water conservancy board and an ownership interest or  
3 municipal water system interest described in subsection (1) or (2) of  
4 this section is held by a commissioner of the board in one of the  
5 applications and the approval or disapproval of another of the  
6 applications would affect the approval of the application in which the  
7 commissioner has such an ownership or municipal system interest, the  
8 commissioner shall not participate in the water conservancy board's  
9 review or decision upon the other application.

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