
SUBSTITUTE HOUSE BILL 1773

State of Washington

54th Legislature

1995 Regular Session

By House Committee on Agriculture & Ecology (originally sponsored by Representatives Delvin, Mastin, Chandler, Mulliken, Clements, Schoesler, Hankins, Sheahan, Grant, Robertson and Honeyford)

Read first time 03/01/95.

1 AN ACT Relating to water marketing; adding a new section to chapter
2 35.92 RCW; adding a new section to chapter 54.08 RCW; adding a new
3 section to chapter 57.08 RCW; adding a new section to chapter 87.03
4 RCW; adding a new section to chapter 89.30 RCW; and adding a new
5 chapter to Title 90 RCW.

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

7 NEW SECTION. **Sec. 1.** As used in this chapter unless the context
8 indicates otherwise:

9 (1) "Conserved water" means ground water or surface water governed
10 by a water right that is made surplus to the beneficial uses exercised
11 under the right through the implementation of practices or
12 technologies, including but not limited to conveyance practices and
13 technologies, which are more water use efficient than those under which
14 the right was perfected or through a change in the crops grown under
15 the water right.

16 (2) "Department" means the department of ecology.

17 (3) "Director" means the director of the department of ecology.

18 (4) "Local water resource agency" means any of the entities listed
19 in section 3(1) (a) through (f) of this act.

1 (5) "Person" means any firm, association, water users' association,
2 corporation, irrigation district, or municipal corporation, as well as
3 an individual.

4 (6) "Water market transfer" or "transfer" means transaction for
5 consideration carried out through a water conservancy district in
6 accordance with the provisions of this chapter in which there is a
7 temporary or permanent change in the place of diversion, place of use,
8 source of supply, time of use, period of use, place of storage, or the
9 purpose of use of all or part of the water to which any person is
10 entitled by reason of owning or holding a water right. The terms water
11 market transfer or transfer is limited to the sale, lease, or exchange
12 of water rights of water conserved by a present user for consideration.
13 A transfer of conserved water does not cause any loss of priority of
14 the right to use such water.

15 (7) "Water conservancy district" means a district duly formed and
16 established pursuant to this chapter with the approval of the
17 department to exercise the powers and authorities of a water
18 conservancy district enumerated herein.

19 (8) "Water resource inventory area" or "WRIA" means a water
20 resource inventory area as defined in WAC 173-500-990.

21 NEW SECTION. **Sec. 2.** The legislature finds:

22 (1) Voluntary water market transfers between water users can
23 reallocate water use in a manner that will result in more efficient use
24 of water resources, benefiting both the buyer and the seller;

25 (2) Voluntary water market transfers can help alleviate water
26 shortages, save capital outlays, reduce development costs, provide an
27 incentive for investment in water conservation efforts by water right
28 holders, and provide significant environmental benefits;

29 (3) Voluntary water market transfers are the most efficient means
30 to encourage the reallocation of water resources to their highest and
31 best use while protecting the rights and interests of water right
32 holders.

33 For these reasons the legislature declares, it is in the public
34 interest to facilitate the development of a viable commodity market for
35 water rights, to encourage voluntary water market transfers, and to
36 remove existing administrative, legal, and economic barriers to the
37 voluntary alienation of water rights.

1 To achieve the public purposes of this section, chapter . . . , Laws
2 of 1995 (this act) shall be liberally construed.

3 NEW SECTION. **Sec. 3.** (1) Any of the following local water
4 resource agencies may petition the department for permission to
5 organize a water conservancy district and to exercise the powers and
6 authorities of a water conservancy district enumerated in this chapter
7 within the geographic boundaries of the local water resource agency and
8 any area in which the agency provides retail service to customers or
9 members:

10 (a) Any irrigation district organized under chapter 87.03 RCW;

11 (b) Any reclamation district organized under chapter 89.30 RCW;

12 (c) Any city that operates a municipal water supply system pursuant
13 to chapter 35.92 RCW;

14 (d) Any public utility district that operates a municipal water
15 supply system pursuant to chapter 54.08 RCW;

16 (e) Any water district that operates a municipal water supply
17 system pursuant to chapter 57.08 RCW; or

18 (f) Any cooperative or mutual corporation that operates a public
19 water system serving one hundred or more accounts.

20 (2) A water conservancy district formed and organized pursuant to
21 this section by a local water resource agency shall constitute a
22 separate governmental subdivision of this state, and a public body
23 corporate and politic exercising public powers. The initial and
24 successor directors or other governing body of the water conservancy
25 district shall be appointed by the governing body of the local water
26 resource agency petitioner. The number of directors shall be three and
27 any director may be reappointed for successive terms.

28 NEW SECTION. **Sec. 4.** (1) Twelve or more water right holders who
29 divert water for use within one or more WRIA may petition the
30 department for permission to organize a water conservancy district
31 encompassing the geographic area of the WRIAs in which the petitioners
32 divert or use water and to exercise the powers and authorities of a
33 water conservancy district enumerated in this chapter, provided, if the
34 district is proposed to include two or more WRIAs, there shall be at
35 least six petitioners who divert water for use within each WRIA to be
36 included in the district.

1 (2) A water conservancy district formed and organized pursuant to
2 this section by twelve or more water right holders shall constitute a
3 separate governmental subdivision of this state, and a public body
4 corporate and politic exercising public powers. The district shall
5 have a governing body of three directors. Immediately upon approval of
6 a petition to form a district, the initial governing body of such water
7 conservancy district shall be appointed by the director from among six
8 individuals recommended by the petitioners. The initial directors
9 shall form and organize the district and shall serve as the initial
10 governing body of the district. When the term of any initial director
11 expires, the director shall appoint a successor. Any director may be
12 reappointed for successive terms. If any director does not complete
13 his or her term, a successor shall be appointed to fill out the
14 remaining term. If any director does not complete his or her term, a
15 successor shall be appointed to fill out the remaining term. Any water
16 right holder who diverts or uses water within the WRIAs included in the
17 district may be appointed as a successor director.

18 NEW SECTION. **Sec. 5.** (1) Any combination of two or more local
19 water resource agencies or one or more local water resource agencies
20 and twelve or more eligible water right holder petitioners may jointly
21 petition the department for permission to organize a water conservancy
22 district and to exercise the powers and authorities of a water
23 conservancy district enumerated in this chapter within the geographic
24 boundaries of any of the participating local water resource agencies
25 and any area in which any agency provides retail service to customers
26 or members, or within any WRIA in which at least six of the water right
27 holder petitioners joining in the petition divert or use water.

28 (2) A water conservancy district formed and organized by any
29 combination of two or more local water resource agencies, or two or
30 more local water resource agencies and six eligible water right holder
31 petitioners, shall constitute a separate governmental subdivision of
32 this state, and a public body corporate and politic exercising public
33 powers. Upon approval of the petition, one initial director of the
34 water conservancy district shall be appointed by the governing body of
35 each local water resource agency joining in the petition and, if twelve
36 or more water right holders have joined in the petition, one initial
37 director shall be appointed by the director from among three
38 individuals recommended by such water right holder petitioners;

1 provided, if the number of directors appointed in this manner is even,
2 the director may appoint an additional director from among any
3 individuals recommended to the director by any of the petitioners.
4 Upon any vacancy, successor directors shall be appointed in the same
5 manner as initial directors. Any director may be reappointed for
6 successive terms.

7 NEW SECTION. **Sec. 6.** A petition to form a water conservancy
8 district shall conform to the following requirements and shall contain
9 the following information:

10 (1) The name and address of each petitioner.

11 (2) A brief description of the water right and use of each
12 petitioner sufficient to identify the place and source of diversion and
13 the place of use of the water.

14 (3) Identification of the geographic boundaries of any local water
15 resource agency or WRIA or WRIs to be included within the water
16 conservancy district.

17 (4) A statement of the need for the district.

18 (5) The proposed bylaws or an equivalent statement of the rules and
19 procedures that will govern the operation of the district once
20 organized. Such bylaws shall provide, among other things, for four-
21 year terms for directors. Terms of directors shall be staggered by the
22 appointment of initial directors for less than a full four-year term.

23 (6) Identification of the individuals who will be appointed as
24 initial directors of the district by each local water resource agency
25 joining in the petition, including a statement of their qualifications
26 to carry out and supervise the activities of the district, and a list
27 of the individuals recommended by water right holder petitioners to
28 serve as initial directors, including a statement of the qualifications
29 of each individual to carry out and supervise the activities of the
30 district.

31 NEW SECTION. **Sec. 7.** (1) The petition shall be presented to the
32 director. As soon as practicable after it is received, but no later
33 than one hundred eighty days, the department shall determine if
34 approval of the petition would further the purposes of this chapter.

35 (2) No later than one hundred eighty days after the petition is
36 first presented to the director, he or she shall act on the petition.

1 (a) If the petition is approved, the local water resource agency or
2 the director, as the case may be, shall immediately appoint the initial
3 directors, who shall form and organize the district and serve as its
4 initial governing body. Directors shall serve without compensation but
5 may be reimbursed for their expenses incurred incident to performing or
6 conducting district business.

7 (b) If the director fails to act on the petition within one hundred
8 eighty days after presentation, the petition shall be deemed approved
9 and the petitioners shall be authorized to appoint directors and
10 organize and establish a water conservancy district for any or all of
11 the purposes mentioned herein.

12 (c) If a petition is denied, the director shall render a detailed
13 explanation of the reasons for denial, including any deficiencies in
14 the petition which, if corrected, would allow the petition to be
15 approved. A petition that has been denied may be resubmitted with
16 modifications incorporated for the purpose of addressing the director's
17 reasons for denial of the original petition.

18 (3) Upon approval of a petition by the director and the appointment
19 of directors, the petitioners may organize and operate a water
20 conservancy district with all of the powers that may now or hereafter
21 be conferred on such districts by law. The bylaws or equivalent
22 statement of applicable rules of the district submitted with the
23 petition shall not be amended without the approval of the director.

24 (4) The director may initiate a review of the capability of any
25 district to carry out the powers, authorities, and duties enumerated in
26 this chapter and to determine if any existing water conservancy
27 district has substantially failed to perform its duties in compliance
28 with law, including compliance with any guidelines adopted by the
29 department for review and approval of water market transfers. The
30 director may suspend the authority of any district under this chapter
31 upon a finding that a district lacks the capability to perform its
32 authorities and duties under this chapter or that it has substantially
33 failed to perform its duties in compliance with law; provided, that any
34 order or decision by the director to suspend the authority of a
35 district shall specify, in detail, the reasons for the suspension and
36 the actions necessary to rescind the suspension.

37 NEW SECTION. **Sec. 8.** (1) Each water conservancy district may
38 establish a schedule of transaction fees and costs for the goods and

1 services provided by the district and may assess such charges to
2 persons requesting goods or services from the district according to the
3 schedule. Such fees need not be uniform from district to district but
4 may not exceed an amount necessary to cover the district's actual cost
5 of the goods or services provided, including a reasonable allocation of
6 the district's overhead costs.

7 (2) The governing body of a water conservancy district may
8 authorize payments for district operations and activities with revenues
9 obtained from:

10 (a) Fees for goods and services provided by the district; or

11 (b) Federal, state, or private grants, or contributions from
12 municipalities.

13 (3) Any municipality or other corporation eligible to petition for
14 the formation of a water conservancy district may contribute funds to
15 the district to pay general overhead and administrative costs of the
16 district and to utilize for that purpose any funds that would be
17 available to pay for the general overhead and administrative costs of
18 the municipality or other corporation. In addition, any such municipal
19 or other corporation may contribute funds to the district to carry out
20 any project, activity, or purpose which the district is authorized to
21 carry out provided that the municipal or other corporation is also
22 authorized to expend funds for such purposes.

23 (4) A water conservancy district organized under the provisions of
24 this chapter shall not levy taxes or issue bonds, provided, neither
25 this section nor any other provision of this chapter shall restrict or
26 limit the powers and authorities of any municipality or any other
27 corporation to raise or expend funds or limit such person in any way
28 from exercising the powers and authorities which any such person
29 possesses when acting in its own right, and such persons shall continue
30 to have and exercise all powers and authorities according to any
31 applicable statutes, regulations, articles of incorporation, or other
32 governing law, agreement, or authority applicable to said person.

33 NEW SECTION. **Sec. 9.** Any water conservancy district, and the
34 directors thereof, shall have the following powers, in addition to
35 others granted in this chapter:

36 (1) A water conservancy district is authorized to establish a water
37 market transfer exchange through which all or part of any conserved
38 water which any person is entitled to use by reason of owning or

1 holding a water right may be listed for sale or transfer. Each water
2 conservancy district shall maintain and publish all information made
3 available to the district concerning water rights listed with the
4 district and any application to the district for approval of a water
5 market transfer.

6 (2) Each water conservancy district shall establish a program and
7 procedures, consistent with applicable law and rules adopted by the
8 department, for the administration of a system of timely local
9 approvals for water market transfers pursuant to this chapter. The
10 administration of the system shall be performed exclusively by the
11 district.

12 (3) The transferor and the transferee of any proposed water market
13 transfer may apply to a water conservancy district for approval of such
14 transfer if the water proposed to be transferred is currently diverted
15 or used within the geographic boundaries of the district, or would be
16 diverted or used within the geographic boundaries of the district if
17 the transfer is approved. The application shall contain such
18 information as may be required by the district in order to review and
19 act on the application.

20 (4) A water conservancy district may review and approve any
21 application for a water market transfer if the water proposed to be
22 transferred is currently diverted or used within the geographic
23 boundaries of the water conservancy district, or the water would be
24 diverted or used within the geographic boundaries of the district if
25 the proposed transfer is approved. Water that is diverted or used
26 within a district which is transferred to an instream use shall be
27 deemed to be used within the district. The district shall publish
28 notice of the application and send notice to state agencies as provided
29 in RCW 90.03.280. A transfer may only be approved if it can be made
30 without injury or detriment to existing rights. Any person claiming
31 detriment or injury to an existing water right as a result of the
32 proposed transfer may intervene in any application before the district.
33 Other interested persons may submit comments. The district shall
34 review each application for a transfer and determine whether it meets
35 the requirements of this chapter and any rules adopted by the
36 department pursuant to this chapter, and otherwise complies with law.
37 If a majority of the governing body of the district determines that the
38 application is complete and in accordance with law, and the transfer
39 may be made without injury or detriment to existing rights of other

1 water right holders, the district shall issue to the applicant a
2 certificate conditionally approving such transfer, subject to review by
3 the director as provided in this section.

4 (5) A water conservancy district is authorized to acquire,
5 purchase, hold, lease, manage, occupy, and sell real and personal
6 property or any interest therein, to enter into and perform any and all
7 necessary contracts, to appoint and employ the necessary agents and
8 employees, to employ contractors, including contracts for professional
9 services, to sue and be sued, and to do any and all lawful acts
10 required and expedient to carry out the purposes of this chapter.

11 NEW SECTION. **Sec. 10.** Notwithstanding any provision of RCW
12 90.03.380 and 90.44.100 and chapters 90.38 and 90.42 RCW, any water
13 right holder may enter into a water market transfer according to the
14 procedures and under the terms and conditions specified in this
15 chapter. The procedures and criteria for approval of a water market
16 transfer as defined in this chapter are nonexclusive and are intended
17 to be a separate, alternative, and supplementary procedure for
18 obtaining approval of a transfer or change in a water right in
19 conserved water. Transfers shall be subject to the following
20 additional terms and conditions:

21 (1) Except as modified by this chapter or as may be inconsistent
22 with this chapter, other laws applicable to a change or transfer of
23 water right or use shall be applicable to water market transfers.

24 (2) All or a portion of a water right in conserved water may be
25 sold and transferred by the holder to another through a water market
26 transfer and it shall become appurtenant to any other land or place of
27 use without loss of priority of right, provided, that the proposed use
28 of the buyer is a beneficial use and such change can be made without
29 detriment or injury to existing rights.

30 NEW SECTION. **Sec. 11.** (1) The application of the transferor and
31 the transferee in any proposed water market transfer shall include, in
32 addition to other information required by the district, information
33 sufficient to establish to the district's satisfaction, the
34 transferor's entitlement to the quantity of water being transferred,
35 and it shall describe any applicable existing limitations on the right
36 to use water, including, without limitation, the place of diversion,

1 place of use, source of supply, time of use, period of use, and the
2 place of storage.

3 (2) A water right or nonconsumptive use in conserved water that has
4 not been adjudicated may be transferred under this chapter, provided,
5 neither the district's approval of a transfer, nor the department's
6 approval of the district's action shall constitute an adjudication of
7 the validity, priority, or quantity of the transferor's water right as
8 between the transferor or the transferee and the state, or as between
9 the transferor or the transferee and one or more other water use
10 claimants and such approvals shall not preclude or prejudice a
11 subsequent challenge to the validity, priority, or quantity of such
12 right in an adjudication proceeding.

13 NEW SECTION. **Sec. 12.** (1) If an application for transfer proposes
14 to transfer water rights in conserved water from one irrigation
15 district to another, approval of the transfer shall be conditioned upon
16 receipt of concurrence from each of the irrigation districts that such
17 transfer will not adversely affect the ability to deliver water to
18 other landowners or impair the financial integrity of either of the
19 irrigation districts. A transfer involving a change in place of use or
20 a nonconsumptive use by an individual water user or users of water
21 provided by an irrigation district need only receive approval for the
22 change from the board of directors of the irrigation district if the
23 use of water continues within the irrigation district.

24 (2) There shall be a rebuttable presumption that any water market
25 transfer does not impair or injure any existing rights of third
26 parties; provided, if any person claims to be the holder of a right
27 impaired by a proposed transfer, such person shall have the right to a
28 hearing before the governing body of the district. The district shall
29 receive such evidence as it may deem material and necessary to
30 determine the validity of the claim of impairment. If the evidence
31 presented by the party claiming an impairment establishes that more
32 probably than not, that the claimant's water right would be impaired by
33 the proposed transfer, the district may not approve the transfer
34 unless:

35 (a) The applicant and the impaired party agree upon compensation
36 for the impairment; or

37 (b) The applicant proposes a physical solution that substantially
38 mitigates the impairment and is reasonable under the circumstances.

1 (3) Any water market transfer that is limited to the consumptive
2 quantity of the transferor or a nonconsumptive use shall be
3 conclusively presumed to cause no detriment or impairment to existing
4 rights of third parties. For purposes of this section, the term
5 "consumptive quantity" means the actual five-year average amount of
6 water that the water right holder has diverted reduced by the estimated
7 amount of return flows. The burden shall be on the applicant to
8 establish that a proposed transfer is limited to the transferor's
9 consumptive quantity.

10 (4) Existing rights include instream flows and nonconsumptive uses
11 for public and private fish propagation established under chapter 90.22
12 RCW or by court decree, as well as other junior and senior rights.

13 NEW SECTION. **Sec. 13.** (1) If a transfer is approved by a water
14 conservancy district, the district shall submit a copy of the proposed
15 certificate conditionally approving the transfer to the department for
16 review. Along with a copy of the proposed certificate, the district
17 shall submit a report summarizing any factual findings on which the
18 district relied in deciding to approve the proposed transfer. Notice
19 by mail shall be sent to any person who objected to a transfer or who
20 has requested notice.

21 (2) The department is authorized to review any proposed transfer
22 approved by a district for compliance with this chapter, any guidelines
23 adopted by the department, and other applicable law. The parties to a
24 transfer or any third party whose water right is alleged to be impaired
25 by a transfer may appeal the district's decision to the department.
26 The district shall, at the request of the department or any intervenor,
27 forward to the department the files and records upon which the district
28 based its decision. The department shall review the action of the
29 district and affirm, reverse, or modify the action of the district
30 within thirty days of receipt. The thirty-day time period for
31 department review of a district's action may be extended an additional
32 thirty days by the department for any reason, or for any time period by
33 the consent of the parties to a transfer. If the department fails to
34 act on the matter within the required time, the district's action shall
35 be deemed final. Upon approval of a water market transfer by the
36 action or nonaction of the department, the conditional certificate
37 issued by the district shall become final and valid.

1 NEW SECTION. **Sec. 14.** The decision of the director or the
2 department to approve or deny a petition to form a water conservancy
3 district, or to suspend a water conservancy district's powers and
4 authorities, or to approve or deny a water market transfer, by action
5 or nonaction, and any other final agency decision or final action
6 pursuant to this chapter, is subject to judicial review as provided in
7 chapter 34.05 RCW.

8 NEW SECTION. **Sec. 15.** (1) Sections 1 through 14 of this act shall
9 not apply to trust water rights acquired by the state through the
10 funding of water conservation projects under chapter 90.38 RCW or RCW
11 90.42.010 through 90.42.070.

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

15 NEW SECTION. **Sec. 16.** Any cooperative corporation or any mutual
16 corporation operating a public water system serving one hundred or more
17 accounts is authorized to be a petitioner to establish a water
18 conservancy district and to exercise the authorities of a water
19 conservancy district and any other powers enumerated in sections 1
20 through 15 of this act.

21 NEW SECTION. **Sec. 17.** A new section is added to chapter 35.92 RCW
22 to read as follows:

23 Any city operating a water system under this chapter is authorized
24 to be a petitioner to establish a water conservancy district and to
25 exercise the authorities of a water conservancy district and any other
26 powers enumerated in sections 1 through 16 of this act.

27 NEW SECTION. **Sec. 18.** A new section is added to chapter 54.08 RCW
28 to read as follows:

29 Any public utility district operating a water system under this
30 chapter is authorized to be a petitioner to establish a water
31 conservancy district and to exercise the authorities of a water
32 conservancy district and any other powers enumerated in sections 1
33 through 16 of this act.

1 NEW SECTION. **Sec. 19.** A new section is added to chapter 57.08 RCW
2 to read as follows:

3 Any water district operating a water system under this chapter is
4 authorized to be a petitioner to establish a water conservancy district
5 and to exercise the authorities of a water conservancy district and any
6 other powers enumerated in sections 1 through 16 of this act.

7 NEW SECTION. **Sec. 20.** A new section is added to chapter 87.03 RCW
8 to read as follows:

9 Any irrigation district organized and operating pursuant to this
10 chapter is authorized to be a petitioner to establish a water
11 conservancy district and to exercise the authorities of a water
12 conservancy district and any other powers enumerated in sections 1
13 through 16 of this act.

14 NEW SECTION. **Sec. 21.** A new section is added to chapter 89.30 RCW
15 to read as follows:

16 Any reclamation district organized and operating pursuant to this
17 chapter is authorized to be a petitioner to establish a water
18 conservancy district and to exercise the authorities of a water
19 conservancy district and any other powers enumerated in sections 1
20 through 15 of this act.

21 NEW SECTION. **Sec. 22.** Sections 1 through 16 of this act shall
22 constitute a new chapter in Title 90 RCW.

--- END ---