
SENATE BILL 6301

State of Washington

66th Legislature

2020 Regular Session

By Senators Van De Wege, Warnick, Salomon, Lovelett, Carlyle, Walsh, Hobbs, Rolfes, Hasegawa, and Wilson, C.

Read first time 01/15/20. Referred to Committee on Agriculture, Water, Natural Resources & Parks.

1 AN ACT Relating to public interest considerations in the transfer
2 or change of surface water rights; amending RCW 90.03.380 and
3 90.03.380; adding a new section to chapter 82.45 RCW; adding a new
4 section to chapter 43.21A RCW; providing an effective date; and
5 providing expiration dates.

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

7 **Sec. 1.** RCW 90.03.380 and 2011 c 112 s 3 are each amended to
8 read as follows:

9 (1) The right to the use of water which has been applied to a
10 beneficial use in the state shall be and remain appurtenant to the
11 land or place upon which the same is used(~~(: PROVIDED, HOWEVER, That~~
12 ~~the)), except as provided in this section. The right may be
13 transferred to another or to others and become appurtenant to any
14 other land or place of use without loss of priority of right
15 theretofore established if ~~((such change can be made without~~
16 ~~detriment or injury to existing rights)) approved as provided in this
17 section. The point of diversion of water for beneficial use or the
18 purpose of use may be changed(~~(, if such change can be made without~~
19 ~~detriment or injury to existing rights)) as provided in this section.
20 A change in the place of use, point of diversion, and/or purpose of
21 use of a water right to enable irrigation of additional acreage or~~~~~~

1 the addition of new uses may be permitted if such change results in
2 no increase in the annual consumptive quantity of water used under
3 the water right. For purposes of this section, "annual consumptive
4 quantity" means the estimated or actual annual amount of water
5 diverted pursuant to the water right, reduced by the estimated annual
6 amount of return flows, averaged over the two years of greatest use
7 within the most recent five-year period of continuous beneficial use
8 of the water right.

9 (2) Before any transfer of such right to use water or change of
10 the point of diversion of water or change of purpose of use can be
11 made, any person having an interest in the transfer or change, shall
12 file a written application therefor with the department, and the
13 application shall not be granted until notice of the application is
14 published as provided in RCW 90.03.280. (~~(If it shall appear that~~
15 ~~such transfer or such change may be made without injury or detriment~~
16 ~~to existing rights, the department shall issue to the applicant a~~
17 ~~certificate in duplicate granting the right for such transfer or for~~
18 ~~such change of point of diversion or of use.)~~ The department may
19 grant a certificate for the transfer or change if it determines that
20 the transfer or change can be made without detriment or injury to
21 existing rights; and for interbasin water rights transfers, that the
22 transfer is consistent with the public interest, considering the
23 following:

24 (a) The economic net benefits to the state and local region,
25 including the consideration of the opportunity costs of alternative
26 foregone uses of the water in the basin of the water source;

27 (b) The cost-effectiveness of the proposed use in comparison with
28 alternative sources of water in the basin to which the use will be
29 transferred, including the costs and benefits external to the
30 applicant or transferee;

31 (c) Effects on public uses of water, including the instream uses
32 enumerated in RCW 90.22.010 and 90.54.020;

33 (d) Water resource plans and local comprehensive growth
34 management plans applicable to the area of the water source;

35 (e) Effects on public land and facilities and other water-related
36 public resources;

37 (f) Effects of proposed water transfers to another location upon
38 the local communities in the area of origin;

39 (g) Effects on water quality, public health, and safety;

1 (h) The extent to which the proposal maximizes water conservation
2 and efficient use;

3 (i) Effects upon public access to navigable and other waters of
4 the state; and

5 (j) Consistency with applicable water resource fundamental
6 principles of RCW 90.54.020.

7 (3) The certificate so issued shall be filed and be made a record
8 with the department and ~~((the))~~ a duplicate certificate issued to the
9 applicant ~~((may))~~ must be filed with the county auditor in like
10 manner and with the same effect as provided in the original
11 certificate or permit to divert water. The time period that the water
12 right was banked under RCW 90.92.070, in an approved local water plan
13 created under RCW 90.92.090, or the water right was subject to an
14 agreement to not divert under RCW 90.92.050 will not be included in
15 the most recent five-year period of continuous beneficial use for the
16 purpose of determining the annual consumptive quantity under this
17 section. If the water right has not been used during the previous
18 five years but the nonuse of which qualifies for one or more of the
19 statutory good causes or exceptions to relinquishment in RCW
20 90.14.140 and 90.44.520, the period of nonuse is not included in the
21 most recent five-year period of continuous beneficial use for
22 purposes of determining the annual consumptive quantity of water
23 under this section.

24 ~~((+2))~~ (4) If an application for change proposes to transfer
25 water rights from one irrigation district to another, the department
26 shall, before publication of notice, receive concurrence from each of
27 the irrigation districts that such transfer or change will not
28 adversely affect the ability to deliver water to other landowners or
29 impair the financial integrity of either of the districts.

30 ~~((+3))~~ (5) A change in place of use by an individual water user
31 or users of water provided by an irrigation district need only
32 receive approval for the change from the board of directors of the
33 district if the use of water continues within the irrigation
34 district, and when water is provided by an irrigation entity that is
35 a member of a board of joint control created under chapter 87.80 RCW,
36 approval need only be received from the board of joint control if the
37 use of water continues within the area of jurisdiction of the joint
38 board and the change can be made without detriment or injury to
39 existing rights.

1 ~~((4))~~ (6) This section shall not apply to trust water rights
2 acquired by the state through the funding of water conservation
3 projects under chapter 90.38 RCW or RCW 90.42.010 through 90.42.070.

4 ~~((5))~~ (7)(a) Pending applications for new water rights are not
5 entitled to protection from impairment, injury, or detriment when an
6 application relating to an existing surface or ground water right is
7 considered.

8 (b) Applications relating to existing surface or ground water
9 rights may be processed and decisions on them rendered independently
10 of processing and rendering decisions on pending applications for new
11 water rights within the same source of supply without regard to the
12 date of filing of the pending applications for new water rights.

13 (c) Notwithstanding any other existing authority to process
14 applications, including but not limited to the authority to process
15 applications under WAC 173-152-050 as it existed on January 1, 2001,
16 an application relating to an existing surface or ground water right
17 may be processed ahead of a previously filed application relating to
18 an existing right when sufficient information for a decision on the
19 previously filed application is not available and the applicant for
20 the previously filed application is sent written notice that explains
21 what information is not available and informs the applicant that
22 processing of the next application will begin. The previously filed
23 application does not lose its priority date and if the information is
24 provided by the applicant within sixty days, the previously filed
25 application shall be processed at that time. This subsection ~~((5))~~
26 (7)(c) does not affect any other existing authority to process
27 applications.

28 (d) Nothing in this subsection ~~((5))~~ (7) is intended to stop
29 the processing of applications for new water rights.

30 ~~((6))~~ (8) No applicant for a change, transfer, or amendment of
31 a water right may be required to give up any part of the applicant's
32 valid water right or claim to a state agency, the trust water rights
33 program, or to other persons as a condition of processing the
34 application.

35 ~~((7))~~ (9) In revising the provisions of this section and adding
36 provisions to this section by chapter 237, Laws of 2001, the
37 legislature does not intend to imply legislative approval or
38 disapproval of any existing administrative policy regarding, or any
39 existing administrative or judicial interpretation of, the provisions
40 of this section not expressly added or revised.

1 ~~((8))~~ (10) The development and use of a small irrigation
2 impoundment, as defined in RCW 90.03.370(8), does not constitute a
3 change or amendment for the purposes of this section. The exemption
4 expressly provided by this subsection shall not be construed as
5 requiring a change or transfer of any existing water right to enable
6 the holder of the right to store water governed by the right.

7 ~~((9))~~ (11) This section does not apply to a water right
8 involved in an approved local water plan created under RCW 90.92.090,
9 a water right that is subject to an agreement not to divert under RCW
10 90.92.050, or a banked water right under RCW 90.92.070.

11 ~~((10))~~ (12)(a) The department may only approve an application
12 submitted after July 22, 2011, for an interbasin water rights
13 transfer after providing notice electronically to the board of county
14 commissioners in the county of origin upon receipt of an application.

15 (b) ~~((For the purposes of this subsection:~~

16 ~~(i))~~ This subsection applies to counties located east of the
17 crest of the Cascade mountains.

18 (13) The definitions in this subsection apply throughout this
19 section unless the context clearly requires otherwise.

20 (a) "Interbasin water rights transfer" means a transfer of a
21 water right for which the proposed point of diversion is in a
22 different basin than the proposed place of beneficial use.

23 ~~((ii))~~ (b) "County of origin" means the county from which a
24 water right is transferred or proposed to be transferred.

25 ~~((c) This subsection applies to counties located east of the~~
26 ~~crest of the Cascade mountains.))~~

27 **Sec. 2.** RCW 90.03.380 and 2011 c 112 s 3 are each amended to
28 read as follows:

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

1 A change in the place of use, point of diversion, and/or purpose of
2 use of a water right to enable irrigation of additional acreage or
3 the addition of new uses may be permitted if such change results in
4 no increase in the annual consumptive quantity of water used under
5 the water right. For purposes of this section, "annual consumptive
6 quantity" means the estimated or actual annual amount of water
7 diverted pursuant to the water right, reduced by the estimated annual
8 amount of return flows, averaged over the two years of greatest use
9 within the most recent five-year period of continuous beneficial use
10 of the water right.

11 (2) Before any transfer of such right to use water or change of
12 the point of diversion of water or change of purpose of use can be
13 made, any person having an interest in the transfer or change, shall
14 file a written application therefor with the department, and the
15 application shall not be granted until notice of the application is
16 published as provided in RCW 90.03.280. (~~If it shall appear that~~
17 ~~such transfer or such change may be made without injury or detriment~~
18 ~~to existing rights, the department shall issue to the applicant a~~
19 ~~certificate in duplicate granting the right for such transfer or for~~
20 ~~such change of point of diversion or of use.)~~ The department may
21 grant a certificate for the transfer or change if it determines that
22 the transfer or change can be made without detriment or injury to
23 existing rights; and for interbasin water rights transfers, that the
24 transfer is consistent with the public interest, considering the
25 following:

26 (a) The economic net benefits to the state and local region,
27 including the consideration of the opportunity costs of alternative
28 foregone uses of the water in the basin of the water source;

29 (b) The cost-effectiveness of the proposed use in comparison with
30 alternative sources of water in the basin to which the use will be
31 transferred, including the costs and benefits external to the
32 applicant or transferee;

33 (c) Effects on public uses of water, including the instream uses
34 enumerated in RCW 90.22.010 and 90.54.020;

35 (d) Water resource plans and local comprehensive growth
36 management plans applicable to the area of the water source;

37 (e) Effects on public land and facilities and other water-related
38 public resources;

39 (f) Effects of proposed water transfers to another location upon
40 the local communities in the area of origin;

1 (g) Effects on water quality, public health, and safety;

2 (h) The extent to which the proposal maximizes water conservation
3 and efficient use;

4 (i) Effects upon public access to navigable and other waters of
5 the state; and

6 (j) Consistency with applicable water resource fundamental
7 principles of RCW 90.54.020.

8 (3) The certificate so issued shall be filed and be made a record
9 with the department and (~~the~~) a duplicate certificate issued to the
10 applicant (~~may~~) must be filed with the county auditor in like
11 manner and with the same effect as provided in the original
12 certificate or permit to divert water.

13 (~~(2)~~) (4) If an application for change proposes to transfer
14 water rights from one irrigation district to another, the department
15 shall, before publication of notice, receive concurrence from each of
16 the irrigation districts that such transfer or change will not
17 adversely affect the ability to deliver water to other landowners or
18 impair the financial integrity of either of the districts.

19 (~~(3)~~) (5) A change in place of use by an individual water user
20 or users of water provided by an irrigation district need only
21 receive approval for the change from the board of directors of the
22 district if the use of water continues within the irrigation
23 district, and when water is provided by an irrigation entity that is
24 a member of a board of joint control created under chapter 87.80 RCW,
25 approval need only be received from the board of joint control if the
26 use of water continues within the area of jurisdiction of the joint
27 board and the change can be made without detriment or injury to
28 existing rights.

29 (~~(4)~~) (6) This section shall not apply to trust water rights
30 acquired by the state through the funding of water conservation
31 projects under chapter 90.38 RCW or RCW 90.42.010 through 90.42.070.

32 (~~(5)~~) (7)(a) Pending applications for new water rights are not
33 entitled to protection from impairment, injury, or detriment when an
34 application relating to an existing surface or ground water right is
35 considered.

36 (b) Applications relating to existing surface or ground water
37 rights may be processed and decisions on them rendered independently
38 of processing and rendering decisions on pending applications for new
39 water rights within the same source of supply without regard to the
40 date of filing of the pending applications for new water rights.

1 (c) Notwithstanding any other existing authority to process
2 applications, including but not limited to the authority to process
3 applications under WAC 173-152-050 as it existed on January 1, 2001,
4 an application relating to an existing surface or ground water right
5 may be processed ahead of a previously filed application relating to
6 an existing right when sufficient information for a decision on the
7 previously filed application is not available and the applicant for
8 the previously filed application is sent written notice that explains
9 what information is not available and informs the applicant that
10 processing of the next application will begin. The previously filed
11 application does not lose its priority date and if the information is
12 provided by the applicant within sixty days, the previously filed
13 application shall be processed at that time. This subsection ~~((5))~~
14 (7)(c) does not affect any other existing authority to process
15 applications.

16 (d) Nothing in this subsection ~~((5))~~ (7) is intended to stop
17 the processing of applications for new water rights.

18 ~~((6))~~ (8) No applicant for a change, transfer, or amendment of
19 a water right may be required to give up any part of the applicant's
20 valid water right or claim to a state agency, the trust water rights
21 program, or to other persons as a condition of processing the
22 application.

23 ~~((7))~~ (9) In revising the provisions of this section and adding
24 provisions to this section by chapter 237, Laws of 2001, the
25 legislature does not intend to imply legislative approval or
26 disapproval of any existing administrative policy regarding, or any
27 existing administrative or judicial interpretation of, the provisions
28 of this section not expressly added or revised.

29 ~~((8))~~ (10) The development and use of a small irrigation
30 impoundment, as defined in RCW 90.03.370(8), does not constitute a
31 change or amendment for the purposes of this section. The exemption
32 expressly provided by this subsection shall not be construed as
33 requiring a change or transfer of any existing water right to enable
34 the holder of the right to store water governed by the right.

35 ~~((9))~~ (11)(a) The department may only approve an application
36 submitted after June 30, 2019, for an interbasin water rights
37 transfer after providing notice electronically to the board of county
38 commissioners in the county of origin upon receipt of an application.

39 (b) ~~((For the purposes of this subsection:~~

1 ~~(i))~~ This subsection applies to counties located east of the
2 crest of the Cascade mountains.

3 (12) The definitions in this subsection apply throughout this
4 section unless the context clearly requires otherwise.

5 (a) "Interbasin water rights transfer" means a transfer of a
6 water right for which the proposed point of diversion is in a
7 different basin than the proposed place of beneficial use.

8 ~~((ii))~~ (b) "County of origin" means the county from which a
9 water right is transferred or proposed to be transferred.

10 ~~((c) This subsection applies to counties located east of the~~
11 ~~crest of the Cascade mountains.))~~

12 NEW SECTION. Sec. 3. A new section is added to chapter 82.45
13 RCW to read as follows:

14 (1) For the purposes of this chapter, the term "sale" as defined
15 in RCW 82.45.010 does not apply to the sale of a water right to be
16 transferred separately from the land to which it is appurtenant,
17 provided that the purchaser, within thirty days of the sale, files
18 with the department of ecology a notice of the sale that includes the
19 following:

20 (a) The amount of the selling price;

21 (b) A description of the water right being transferred, including
22 reference to the permit or certificate for the right issued by the
23 department of ecology;

24 (c) Whether the water subject to the sale will continue to be
25 used upon the land to which it is appurtenant; and

26 (d) Where the purchaser intends to seek approval for a change in
27 place of use of the water right, whether the purchaser intends to
28 temporarily transfer the water right into the state trust water
29 rights program under chapter 90.42 RCW.

30 (2) The purchaser must provide notice immediately to the seller
31 upon the filing of the notice under subsection (1) of this section.

32 (3) This section expires June 30, 2025.

33 NEW SECTION. Sec. 4. A new section is added to chapter 43.21A
34 RCW to read as follows:

35 (1) By December 1, 2024, the department must submit a report to
36 the appropriate committees of the senate and house of representatives
37 in compliance with RCW 43.01.036 that summarizes the information
38 provided in notices of the sale of water rights under section 3 of

1 this act. The department in consultation with the department of
2 revenue shall include a recommendation on whether to extend the
3 provisions of section 3 of this act.

4 (2) This section expires June 30, 2025.

5 NEW SECTION. **Sec. 5.** Section 1 of this act expires June 30,
6 2021.

7 NEW SECTION. **Sec. 6.** Section 2 of this act takes effect June
8 30, 2021.

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