

2 **ESHB 1236** - S COMM AMD (S-3283.1)
3 By Committee on Ways & Means

4 ADOPTED AS AMENDED BY S-3328.1 - 4/14/93

5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. **Sec. 1.** The legislature finds that a water right
8 confers significant economic benefits to the water right holder. The
9 fees associated with acquiring a water right have not changed
10 significantly since 1917. Water rights applicants pay less than two
11 percent of the costs of the administration of the water rights program.
12 The legislature finds that, since water rights are of significant
13 value, water rights applicants should contribute more to the cost of
14 administration of the water rights program.

15 The legislature also finds that an abrupt increase in water rights
16 fees could be disruptive to water rights holders and applicants. The
17 legislature further finds that water rights applicants have a right to
18 know that the water rights program is being administered efficiently
19 and that the fees charged for various services relate directly to the
20 cost of providing those services.

21 Therefore, the legislature creates a task force to review the water
22 rights program, to make recommendations for streamlining the
23 application process and increasing the overall efficiency and
24 accountability of the administration of the program, and to return to
25 the legislature with a proposal for a fee schedule where the fee levels
26 relate clearly to the cost of services provided.

27 **Sec. 2.** RCW 90.03.470 and 1987 c 109 s 98 are each amended to read
28 as follows:

29 Except as otherwise provided in subsection (15) of this section,
30 the following fees shall be collected by the department in advance:

31 (1) For the examination of an application for permit to appropriate
32 water or on application to change point of diversion, withdrawal,
33 purpose or place of use, a minimum of ten dollars, to be paid with the
34 application. For each second foot between one and five hundred second
35 feet, two dollars per second foot; for each second foot between five

1 hundred and two thousand second feet, fifty cents per second foot; and
2 for each second foot in excess thereof, twenty cents per second foot.
3 For each acre foot of storage up to and including one hundred thousand
4 acre feet, one cent per acre foot, and for each acre foot in excess
5 thereof, one-fifth cent per acre foot. The ten dollar fee payable with
6 the application shall be a credit to that amount whenever the fee for
7 direct diversion or storage totals more than ten dollars under the
8 above schedule and in such case the further fee due shall be the total
9 computed amount less ten dollars.

10 Within five days from receipt of an application the department
11 shall notify the applicant by registered mail of any additional fees
12 due under the above schedule and any additional fees shall be paid to
13 and received by the department within thirty days from the date of
14 filing the application, or the application shall be rejected.

15 (2) For filing and recording a permit to appropriate water for
16 irrigation purposes, forty cents per acre for each acre to be irrigated
17 up to and including one hundred acres, and twenty cents per acre for
18 each acre in excess of one hundred acres up to and including one
19 thousand acres, and ten cents for each acre in excess of one thousand
20 acres; and also twenty cents for each theoretical horsepower up to and
21 including one thousand horsepower, and four cents for each theoretical
22 horsepower in excess of one thousand horsepower, but in no instance
23 shall the minimum fee for filing and recording a permit to appropriate
24 water be less than five dollars. For all other beneficial purposes the
25 fee shall be twice the amount of the examination fee except that for
26 individual household and domestic use, which may include water for
27 irrigation of a family garden, the fee shall be five dollars.

28 (3) For filing and recording any other water right instrument, four
29 dollars for the first hundred words and forty cents for each additional
30 hundred words or fraction thereof.

31 (4) For making a copy of any document recorded or filed in his
32 office, forty cents for each hundred words or fraction thereof, but
33 when the amount exceeds twenty dollars, only the actual cost in excess
34 of that amount shall be charged.

35 (5) For certifying to copies, documents, records or maps, two
36 dollars for each certification.

37 (6) For blueprint copies of a map or drawing, or, for such other
38 work of a similar nature as may be required of the department, at
39 actual cost of the work.

1 (7) For granting each extension of time for beginning construction
2 work under a permit to appropriate water, an amount equal to one-half
3 of the filing and recording fee, except that the minimum fee shall be
4 not less than five dollars for each year that an extension is granted,
5 and for granting an extension of time for completion of construction
6 work or for completing application of water to a beneficial use, five
7 dollars for each year that an extension is granted.

8 (8) For the inspection of any hydraulic works to insure safety to
9 life and property, the actual cost of the inspection, including the
10 expense incident thereto.

11 (9) For the examination of plans and specifications as to safety of
12 controlling works for storage of ten acre feet or more of water, a
13 minimum fee of ten dollars, or the actual cost.

14 (10) For recording an assignment either of a permit to appropriate
15 water or of an application for such a permit, a fee of five dollars.

16 (11) For preparing and issuing all water right certificates, five
17 dollars.

18 (12) For filing and recording a protest against granting any
19 application, two dollars.

20 (13) The department shall provide timely notification by certified
21 mail with return receipt requested to applicants that fees are due. No
22 action may be taken until the fee is paid in full. Failure to remit
23 fees within sixty days of the department's notification shall be
24 grounds for rejecting the application or canceling the permit. Cash
25 shall not be accepted. Fees must be paid by check or money order and
26 are nonrefundable.

27 (14) For purposes of calculating fees for ground water filings, one
28 cubic foot per second shall be regarded as equivalent to four hundred
29 fifty gallons per minute.

30 (15) For the period beginning July 1, 1993, and ending June 30,
31 1994, there is imposed and the department shall collect a fifty dollar
32 surcharge on all water rights applications or changes filed under this
33 section, and upon all water rights applications or changes pending as
34 of July 1, 1993. This charge shall be in addition to any other fees
35 imposed under this section.

36 NEW SECTION. Sec. 3. (1) There is created a water rights fees
37 task force. The task force shall be comprised of fourteen members, who
38 are appointed as follows:

1 (a) Two members of the Washington state house of representatives,
2 one from each major caucus, to be appointed by the speaker of the house
3 of representatives;

4 (b) Two members of the Washington state senate, one from each major
5 caucus, to be appointed by the president of the senate;

6 (c) Ten members, to be appointed jointly by the speaker of the
7 house of representatives and the president of the senate, to represent
8 the following interests: Agriculture, aquaculture, business, cities,
9 counties, the state department of ecology, environmentalists, water
10 recreation interests, water utilities, and hydropower interests. The
11 task force may establish technical advisory committees as necessary to
12 complete its tasks.

13 (2) The task force shall conduct a comprehensive review of water
14 rights fees. The task force's tasks shall include but not be limited
15 to:

16 (a) Identification of the costs associated with the various
17 activities and services provided by the water rights program and
18 examination of how these costs compare with the fees charged for these
19 activities and services;

20 (b) Identification of appropriate accountability measures for the
21 department of ecology to employ in administration of the water rights
22 program. Recommendations of accountability requirements and
23 measurements shall take into account the distinctive characteristics of
24 the water rights program, that is, that the department receives a large
25 number of applications on a one-time basis and that the department of
26 ecology must meet its legal obligations under the doctrine of prior
27 appropriation;

28 (c) Identification of which program activities should be eligible
29 for cost recovery from fees, as well as which direct and indirect costs
30 of program administration;

31 (d) Review of the application, examination, and water rights permit
32 requirements for marine water users to determine if these users should
33 receive special fee consideration;

34 (e) Review of the definition and treatment of nonconsumptive water
35 uses to determine if special fee consideration should be given to these
36 users;

37 (f) Review of the fees and accounting methods for the dam safety
38 program;

1 (g) Identification of the appropriate distribution of
2 responsibility between the applicant and the department of ecology for
3 provision of technical information and analysis; and

4 (h) Establishment of a reasonable time framework for completion of
5 new and pending water rights applications, and an analysis of the staff
6 and funding levels required to meet the established time framework.

7 (3) Before December 1, 1993, the task force shall:

8 (a) Provide recommendations to the department of ecology on ways to
9 improve the efficiency and accountability of the water rights program;

10 (b) Provide recommendations to the legislature on statutory changes
11 necessary to make these efficiency and accountability improvements; and

12 (c) Propose a new fee schedule for the water rights program which
13 incorporates the results of the task force's work and which funds
14 through fees fifty percent of the cost of the activities and services
15 provided by the program.

16 (4) The department of ecology and the legislature shall jointly
17 provide for the staff support of the task force.

18 (5) The task force shall convene as soon as possible upon the
19 appointment of its members. Task force members shall elect a chair and
20 adopt rules for conducting the business of the task force. The task
21 force shall expire on June 30, 1994.

22 NEW SECTION. **Sec. 4.** The legislature finds that there is a
23 significant number of high-value orchard and vineyard crops that can be
24 grown utilizing highly water-efficient trickle irrigation systems. The
25 legislature finds that over a period of several years, existing orchard
26 plantings will be revitalized and replaced with new plantings, and that
27 additional orchards will be planted which provide opportunities for
28 improved water efficiency.

29 The legislature finds that significant water savings could be
30 realized through the installation of trickle irrigation systems where
31 climatically and economically suitable. The legislature also finds
32 that positive economic incentives, establishment of necessary legal
33 procedures, and removal of legal barriers are needed to stimulate the
34 development of workable technologies and farming systems that rely on
35 lesser quantities of water.

36 The purpose of this act is to stimulate the use of trickle
37 irrigation systems by allowing the saved water to be voluntarily
38 transferred by the water right holder to other uses. Additionally, the

1 purpose is to establish incentives through enabling self-funded,
2 private capital or public funds to provide improved market-based
3 incentives for adopting water saving technologies and to allow the
4 benefits of the conserved water to be fully realized. It is the intent
5 of this act that sufficient protections be provided to assure that
6 existing water users are not adversely affected by transfers approved
7 under sections 5 through 12 of this act.

8 NEW SECTION. **Sec. 5.** Unless the context clearly requires
9 otherwise, the definitions in this section apply throughout this
10 chapter.

11 (1) "Contract" means a written legal instrument that provides for
12 the transfer of a portion of a water right from an existing water right
13 holder to another person for consideration.

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

15 (3) "Net water savings" has the same meaning as defined in RCW
16 90.42.020.

17 (4) "Person" means a person, corporation, quasi-municipal
18 corporation, municipal corporation, state, or federal agency.

19 (5) "Reduction in evaporative loss" means the amount of water that
20 was needed to grow an orchard or other crops using conventional
21 irrigation systems minus the quantity of water needed to grow the crops
22 with the use of a trickle irrigation system. "Reduction in evaporative
23 loss" includes the reduction in the amount of water used through
24 transpiration by nonproductive plants such as cover crops.

25 (6) "Trickle irrigation system" means those types of systems which
26 qualify, as determined by the department, that apply water at the base
27 of a plant producing food or fiber with minimal evaporation, or
28 transpiration loss to nonproductive vegetation.

29 (7) "Trust water right" means a water right transferred to and
30 managed by the department for the benefit of instream flows or for the
31 allocation to new uses as provided in chapter 90.38 or 90.42 RCW.

32 NEW SECTION. **Sec. 6.** A person holding a valid water right may
33 enter into a contract with another person for the transfer of water
34 saved through installation of a qualifying trickle irrigation system.
35 In determining the amount that is transferrable, the department shall
36 allow the transfer of an amount equal to the reduction in the

1 evaporative loss. The reduction in evaporative loss is a readily
2 transferrable component of net water savings.

3 In addition, the department shall evaluate whether there are
4 additional net water savings as defined in RCW 90.42.020 that could be
5 transferred to the purchaser without detriment to other existing water
6 users. The department may not delay because of decisions on the
7 determination of additional net water savings the approval of the
8 transfer of the water that constitutes the reduction in evaporative
9 loss.

10 A person wishing to make application for a transfer of a water
11 right under this chapter shall comply with RCW 90.03.380. A contract
12 may allow for a permanent transfer of a portion of the original water
13 right, or for lease agreements with set expiration dates. The
14 applicant shall state that the contract is not permanent in the
15 application if the contract is not permanent.

16 The transferred portion has the same date of priority as the water
17 right from which it originated, but between them the transferred
18 portion of the right is inferior in priority unless otherwise provided
19 by the parties in the contract.

20 The department shall maintain a record of contracts with the
21 certificate of water right for the transferred water.

22 NEW SECTION. **Sec. 7.** The department shall adopt rules, in
23 accordance with chapter 34.05 RCW and by July 1, 1994, for procedures
24 to be used to facilitate the processing of requests for water right
25 transfers made under this chapter and to establish a streamlined
26 procedure to quantify the reduction in the evaporative loss. In
27 developing streamlined procedures, the department may use data from the
28 United States soil conservation service or the Washington state
29 cooperative extension service to base calculations of reduction in
30 evaporative loss in various regions of the state.

31 The rules may establish procedures for the department to make
32 preliminary findings that can be used as an initial basis for
33 developing contracts by applicants.

34 NEW SECTION. **Sec. 8.** An applicant shall accompany an application
35 for a water right transfer under this chapter with a fee of six hundred
36 twenty-five dollars.

1 NEW SECTION. **Sec. 9.** In processing applications for transfers of
2 portions of water rights under this chapter, if the department is
3 unable to conclusively determine the validity of the original water
4 right, the department may include a presumption of validity in the
5 certificate of water rights. The presumption must provide to the
6 contract purchaser the same right to the use of water as the holder of
7 the original water right.

8 The presumption of validity may not be used as evidence as to the
9 existence or nonexistence in a water right adjudication conducted under
10 chapter 90.03 RCW.

11 NEW SECTION. **Sec. 10.** A holder of a water right may voluntarily
12 enter into a contract with the department. The department may utilize
13 funds available from chapter 43.99E RCW to purchase water savings made
14 available under this chapter. The department shall utilize the same
15 methods of calculating water that is transferrable to another party
16 under this chapter in determining the amount of water that is
17 transferrable to the state. If additional net water saved is available
18 for the benefit of only a stream segment, the calculations may be made
19 on a case-by-case basis while assuring no detriment to existing water
20 users occurs.

21 NEW SECTION. **Sec. 11.** A holder of a valid water right who
22 installs a trickle irrigation system may apply for a transfer of the
23 reduction in evaporative loss, plus any additional net water savings,
24 for the irrigation of an additional parcel of previously unirrigated
25 land, to land with less senior water rights, or that lacks a full and
26 sufficient supply. The application must be processed based upon the
27 same criteria as if the transfer were to be made to another person.

28 NEW SECTION. **Sec. 12.** This chapter may be known and cited as the
29 agricultural water conservation incentives act.

30 NEW SECTION. **Sec. 13.** Sections 5 through 12 of this act shall
31 constitute a new chapter in Title 90 RCW.

32 NEW SECTION. **Sec. 14.** If specific funding for the purposes of
33 sections 5 through 12 of this act, referencing this act by bill and
34 section numbers, is not provided by June 30, 1993, in the omnibus

1 appropriations act, sections 5 through 12 of this act shall be null and
2 void.

3 NEW SECTION. **Sec. 15.** Sections 1 through 3 this act are necessary
4 for the immediate preservation of the public peace, health, or safety,
5 or support of the state government and its existing public
6 institutions, and shall take effect immediately.

7 NEW SECTION. **Sec. 16.** If any provision of this act or its
8 application to any person or circumstance is held invalid, the
9 remainder of the act or the application of the provision to other
10 persons or circumstances is not affected.

11 **ESHB 1236** - S COMM AMD
12 By Committee on Ways & Means

13 ADOPTED AS AMENDED 4/14/93

14 On page 1, line 1 of the title, after "approvals;" strike the
15 remainder of the title and insert "amending RCW 90.03.470; adding a new
16 chapter to Title 90 RCW; creating new sections; and declaring an
17 emergency."

--- END ---