

2 **ESHB 1236** - S AMD TO WM COMM AMD (1236-S.E AMS WM S3283.1)
3 By Senators McDonald, Rasmussen, Barr, Sutherland, Sellar and
4 Rinehart

5 ADOPTED 4/14/93

6 On page 5, after line 21 of the amendment, insert the following:

7 NEW SECTION. **Sec. 4.** The legislature finds that there is a
8 significant number of high-value orchard and vineyard crops that can be
9 grown utilizing highly water-efficient trickle irrigation systems. The
10 legislature finds that over a period of several years, existing orchard
11 plantings will be revitalized and replaced with new plantings, and that
12 additional orchards will be planted which provide opportunities for
13 improved water efficiency.

14 The legislature finds that significant water savings could be
15 realized through the installation of trickle irrigation systems where
16 climatically and economically suitable. The legislature also finds
17 that positive economic incentives, establishment of necessary legal
18 procedures, and removal of legal barriers are needed to stimulate the
19 development of workable technologies and farming systems that rely on
20 lesser quantities of water.

21 The purpose of this act is to stimulate the use of trickle
22 irrigation systems by allowing the saved water to be voluntarily
23 transferred by the water right holder to other uses. Additionally, the
24 purpose is to establish incentives through enabling self-funded,
25 private capital or public funds to provide improved market-based
26 incentives for adopting water saving technologies and to allow the
27 benefits of the conserved water to be fully realized. It is the intent
28 of this act that sufficient protections be provided to assure that
29 existing water users are not adversely affected by transfers approved
30 under sections 5 through 12 of this act.

31 NEW SECTION. **Sec. 5.** Unless the context clearly requires
32 otherwise, the definitions in this section apply throughout this
33 chapter.

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

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

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

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

6 (5) "Reduction in evaporative loss" means the amount of water that
7 was needed to grow an orchard or other crops using conventional
8 irrigation systems minus the quantity of water needed to grow the crops
9 with the use of a trickle irrigation system. "Reduction in evaporative
10 loss" includes the reduction in the amount of water used through
11 transpiration by nonproductive plants such as cover crops.

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

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

19 NEW SECTION. **Sec. 6.** A person holding a valid water right may
20 enter into a contract with another person for the transfer of water
21 saved through installation of a qualifying trickle irrigation system.
22 In determining the amount that is transferrable, the department shall
23 allow the transfer of an amount equal to the reduction in the
24 evaporative loss. The reduction in evaporative loss is a readily
25 transferrable component of net water savings.

26 In addition, the department shall evaluate whether there are
27 additional net water savings as defined in RCW 90.42.020 that could be
28 transferred to the purchaser without detriment to other existing water
29 users. The department may not delay because of decisions on the
30 determination of additional net water savings the approval of the
31 transfer of the water that constitutes the reduction in evaporative
32 loss.

33 A person wishing to make application for a transfer of a water
34 right under this chapter shall comply with RCW 90.03.380. A contract
35 may allow for a permanent transfer of a portion of the original water
36 right, or for lease agreements with set expiration dates. The
37 applicant shall state that the contract is not permanent in the
38 application if the contract is not permanent.

1 The transferred portion has the same date of priority as the water
2 right from which it originated, but between them the transferred
3 portion of the right is inferior in priority unless otherwise provided
4 by the parties in the contract.

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

7 NEW SECTION. **Sec. 7.** The department shall adopt rules, in
8 accordance with chapter 34.05 RCW and by July 1, 1994, for procedures
9 to be used to facilitate the processing of requests for water right
10 transfers made under this chapter and to establish a streamlined
11 procedure to quantify the reduction in the evaporative loss. In
12 developing streamlined procedures, the department may use data from the
13 United States soil conservation service or the Washington state
14 cooperative extension service to base calculations of reduction in
15 evaporative loss in various regions of the state.

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

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

22 NEW SECTION. **Sec. 9.** In processing applications for transfers of
23 portions of water rights under this chapter, if the department is
24 unable to conclusively determine the validity of the original water
25 right, the department may include a presumption of validity in the
26 certificate of water rights. The presumption must provide to the
27 contract purchaser the same right to the use of water as the holder of
28 the original water right.

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

32 NEW SECTION. **Sec. 10.** A holder of a water right may voluntarily
33 enter into a contract with the department. The department may utilize
34 funds available from chapter 43.99E RCW to purchase water savings made
35 available under this chapter. The department shall utilize the same

1 methods of calculating water that is transferrable to another party
2 under this chapter in determining the amount of water that is
3 transferrable to the state. If additional net water saved is available
4 for the benefit of only a stream segment, the calculations may be made
5 on a case-by-case basis while assuring no detriment to existing water
6 users occurs.

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

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

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

18 NEW SECTION. **Sec. 14.** If specific funding for the purposes of
19 sections 5 through 12 of this act, referencing this act by bill and
20 section numbers, is not provided by June 30, 1993, in the omnibus
21 appropriations act, sections 5 through 12 of this act shall be null and
22 void."

23 Renumber the remaining sections consecutively and correct any
24 internal references accordingly.

25 On page 5, line 22 of the amendment, after "Sec. 4." strike "This
26 act is" and insert "Sections 1 through 3 of this act are"

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1 On page 6, line 2 of the title amendment, after "90.03.470;" insert
2 "adding a new chapter to Title 90 RCW;"

--- **END** ---