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**SUBSTITUTE HOUSE BILL 1787**

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**State of Washington**

**53rd Legislature**

**1993 Regular Session**

**By** House Committee on Natural Resources & Parks (originally sponsored by Representatives Linville, R. Johnson, Pruitt, Kremen, Rust, Foreman, Quall, Morton, Grant, Johanson, Mastin, Eide and Fuhrman)

Read first time 02/25/93.

1 AN ACT Relating to water resource areas; and amending RCW  
2 90.42.010, 90.42.030, 90.42.040, and 90.42.080.

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

4 **Sec. 1.** RCW 90.42.010 and 1991 c 347 s 5 are each amended to read  
5 as follows:

6 (1) The legislature finds that a need exists to develop and test a  
7 means to facilitate the voluntary transfer of water and water rights,  
8 including conserved water, to provide water for presently unmet needs  
9 and emerging needs. Further, the legislature finds that water  
10 conservation activities have the potential of affecting the quantity of  
11 return flow waters to which existing water right holders have a right  
12 to and rely upon. It is the intent of the legislature that persons  
13 holding rights to water, including return flows, not be adversely  
14 affected in the implementation of the provisions of this chapter.

15 ~~((The purpose of this chapter is to provide the mechanism for  
16 accomplishing this in a manner that will not impair existing rights to  
17 water and to test the mechanism in two pilot planning areas designated  
18 pursuant to RCW 90.54.045(2) and in the water resource inventory areas  
19 designated under subsection (2) of this section.~~

1       ~~(2) The department may designate up to four water resource~~  
2 ~~inventory areas west of the crest of the Cascade mountains and up to~~  
3 ~~four water resource inventory areas east of the crest of the Cascade~~  
4 ~~mountains, as identified pursuant to chapter 90.54 RCW. The areas~~  
5 ~~designated shall contain critical water supply problems and shall~~  
6 ~~provide an opportunity to test and evaluate a variety of applications~~  
7 ~~of RCW 90.42.010 through 90.42.090, including application to municipal,~~  
8 ~~industrial, and agricultural use. The department shall seek advice~~  
9 ~~from appropriate state agencies, Indian tribes, local governments,~~  
10 ~~representatives of water right holders, and interested parties before~~  
11 ~~identifying such water resource inventory areas.~~

12       ~~(3))~~ (2) The department shall provide to the appropriate  
13 legislative committees by December 31, 1993, a written evaluation of  
14 the implementation of RCW 90.42.010 through 90.42.090 and  
15 recommendations for future application.

16       **Sec. 2.** RCW 90.42.030 and 1991 c 347 s 7 are each amended to read  
17 as follows:

18       (1) For purposes of this chapter, the state may enter into  
19 contracts to provide moneys to assist in the financing of water  
20 conservation projects (~~located within pilot planning areas and in~~  
21 ~~water resource inventory areas designated in accordance with RCW~~  
22 ~~90.42.010)). In consideration for the financial assistance provided,~~  
23 the state shall obtain public benefits defined in guidelines developed  
24 under RCW 90.42.050.

25       (2) If the public benefits to be obtained require conveyance or  
26 modification of a water right, the recipient of funds shall convey to  
27 the state the recipient's interest in that part of the water right or  
28 claim constituting all or a portion of the resulting net water savings  
29 for deposit in the trust water rights program. The amount to be  
30 conveyed shall be finitely determined by the parties, in accordance  
31 with the guidelines developed under RCW 90.42.050, before the  
32 expenditure of state funds. Conveyance may consist of complete  
33 transfer, lease contracts, or other legally binding agreements. When  
34 negotiating for the acquisition of conserved water or net water  
35 savings, or a portion thereof, the state may require evidence of a  
36 valid water right.

37       (3) As part of the contract, the water right holder and the state  
38 shall specify the process to determine the amount of water the water

1 right holder would continue to be entitled to once the water  
2 conservation project is in place.

3 (4) The state shall cooperate fully with the United States in the  
4 implementation of this chapter. Trust water rights may be acquired  
5 through expenditure of funds provided by the United States and shall be  
6 treated in the same manner as trust water rights resulting from the  
7 expenditure of state funds.

8 (5) If water is proposed to be acquired by or conveyed to the state  
9 as a trust water right by an irrigation district, evidence of the  
10 district's authority to represent the water right holders shall be  
11 submitted to and for the satisfaction of the department.

12 (6) The state shall not contract with any person to acquire a water  
13 right served by an irrigation district without the approval of the  
14 board of directors of the irrigation district. Disapproval by a board  
15 shall be factually based on probable adverse effects on the ability of  
16 the district to deliver water to other members or on maintenance of the  
17 financial integrity of the district.

18 **Sec. 3.** RCW 90.42.040 and 1991 c 347 s 8 are each amended to read  
19 as follows:

20 (1) All trust water rights acquired by the state shall be placed in  
21 the state trust water rights program to be managed by the department.  
22 Trust water rights acquired by the state shall be held or authorized  
23 for use by the department for instream flows, irrigation, municipal, or  
24 other beneficial uses consistent with applicable regional plans for  
25 pilot planning areas, or to resolve critical water supply problems (~~in~~  
26 ~~water resource inventory areas designated in accordance with RCW~~  
27 ~~90.42.010~~)).

28 (2) The department shall issue a water right certificate in the  
29 name of the state of Washington for each permanent trust water right  
30 conveyed to the state indicating the reach or reaches of the stream,  
31 the quantity, and the use or uses to which it may be applied. A  
32 superseding certificate shall be issued that specifies the amount of  
33 water the water right holder would continue to be entitled to as a  
34 result of the water conservation project. The superseding certificate  
35 shall retain the same priority date as the original right. For  
36 nonpermanent conveyances, the department shall issue certificates or  
37 such other instruments as are necessary to reflect the changes in  
38 purpose or place of use or point of diversion or withdrawal. Water

1 rights for which such nonpermanent conveyances are arranged shall not  
2 be subject to relinquishment for nonuse.

3 (3) A trust water right retains the same priority date as the water  
4 right from which it originated, but as between them the trust right  
5 shall be deemed to be inferior in priority unless otherwise specified  
6 by an agreement between the state and the party holding the original  
7 right.

8 (4) Exercise of a trust water right may be authorized only if the  
9 department first determines that neither water rights existing at the  
10 time the trust water right is established, nor the public interest will  
11 be impaired. If impairment becomes apparent during the time a trust  
12 water right is being exercised, the department shall cease or modify  
13 the use of the trust water right to eliminate the impairment.

14 (5) Before any trust water right is created or modified, the  
15 department shall, at a minimum, require that a notice be published in  
16 a newspaper of general circulation published in the county or counties  
17 in which the storage, diversion, and use are to be made, and in other  
18 newspapers as the department determines is necessary, once a week for  
19 two consecutive weeks. At the same time the department shall send a  
20 notice containing pertinent information to all appropriate state  
21 agencies, potentially affected local governments and federally  
22 recognized tribal governments, and other interested parties.

23 (6) RCW 90.14.140 through 90.14.230 have no applicability to trust  
24 water rights held by the department under this chapter or exercised  
25 under this section.

26 (7) RCW 90.03.380 has no applicability to trust water rights  
27 acquired by the state through the funding of water conservation  
28 projects.

29 **Sec. 4.** RCW 90.42.080 and 1991 c 347 s 12 are each amended to read  
30 as follows:

31 (1) (~~Within the pilot planning areas, and in water resource~~  
32 ~~inventory areas designated in accordance with RCW 90.42.010,~~) The  
33 state may acquire all or portions of existing water rights, by  
34 purchase, gift, or other appropriate means other than by condemnation,  
35 from any person or entity or combination of persons or entities. Once  
36 acquired, such rights are trust water rights.

37 (2) The department may enter into leases, contracts, or such other  
38 arrangements with other persons or entities as appropriate, to ensure

1 that trust water rights acquired in accordance with this chapter may be  
2 exercised to the fullest possible extent.

3 (3) Trust water rights may be acquired by the state on a temporary  
4 or permanent basis.

5 (4) The provisions of RCW 90.03.380 and 90.03.390 apply to  
6 transfers of water rights under this section.

7 (5) No funds may be expended for the purchase of water rights by  
8 the state pursuant to this section unless specifically appropriated for  
9 this purpose by the legislature.

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