

1 **SSB 5606 - H AMD 880 ADOPTED 4/14/95**

2 By Representatives Chandler and Mastin

3 On page 6, after line 18, insert the following:

4 "Sec. 12. RCW 90.03.380 and 1991 c 347 s 15 are each amended
5 to read as follows:

6 (1) The right to the use of water which has been applied to a
7 beneficial use in the state shall be and remain appurtenant to the
8 land or place upon which the same is used: PROVIDED, HOWEVER, That
9 ((said)) the right may be transferred to another or to others and
10 become appurtenant to any other land or place of use without loss
11 of priority of right theretofore established if such change can be
12 made without detriment or injury to existing rights. The point of
13 diversion of water for beneficial use or the purpose of use may be
14 changed, if such change can be made without detriment or injury to
15 existing rights. Before any transfer of such right to use water or
16 change of the point of diversion of water or change of purpose of
17 use can be made, any person having an interest in the transfer or
18 change, shall file a written application therefor with the
19 department, and ((said)) the application shall not be granted until
20 notice of ((said)) the application ((shall be)) is published as
21 provided in RCW 90.03.280. If it shall appear that such transfer
22 or such change may be made without injury or detriment to existing
23 rights, the department shall issue to the applicant a certificate
24 in duplicate granting the right for such transfer or for such
25 change of point of diversion or of use. The certificate so issued
26 shall be filed and be made a record with the department and the
27 duplicate certificate issued to the applicant may be filed with the
28 county auditor in like manner and with the same effect as provided
29 in the original certificate or permit to divert water.

30 (2) If an application for change proposes to transfer water
31 rights from one irrigation district to another, the department

1 shall, before publication of notice, receive concurrence from each
2 of the irrigation districts that such transfer or change will not
3 adversely affect the ability to deliver water to other landowners
4 or impair the financial integrity of either of the districts.

5 (3) A change in place of use by an individual water user or
6 users of water provided by an irrigation district need only receive
7 approval for the change from the board of directors of the district
8 if the use of water continues within the irrigation district.

9 (4) Sections (1), (2), and (3) of this section do not apply to
10 a change regarding a portion of the water governed by a water right
11 that is made surplus to the beneficial uses exercised under the
12 right through the implementation of practices or technologies,
13 including but not limited to conveyance practices or technologies,
14 which are more efficient or more water use efficient than those
15 under which the right was perfected or through a change in crops
16 grown under the water right. The use within an irrigation district
17 of water supplied by the district and made surplus as provided in
18 this subsection shall be regulated solely as provided by the board
19 of directors of the irrigation district except as follows: Such a
20 use requires the approval of the board of directors of the
21 irrigation district or must otherwise be authorized by the board;
22 the board may approve or authorize such a use only if the use does
23 not impair the financial or operational integrity of the district;
24 and water made surplus through a change in the crops grown with
25 district-supplied water is not available for use as a matter of
26 right by the individual water user making the change, but may be
27 used by the board for the benefit of the district generally. The
28 district's board of directors may approve or otherwise authorize
29 under this subsection uses of such surplus water that result in the
30 total irrigated acreage within the district exceeding the irrigated
31 acreage recorded with the department for the district's water right
32 if the board notifies the department of the change in the irrigated
33 acreage within the district. Such a notification provides a change

1 in the district's water right and, upon receiving the notification,
2 the department shall revise its records for the district's right to
3 reflect the change. A change or use authorized by or under this
4 subsection shall be made without loss of priority of the right.
5 The use of water other than irrigation district-supplied water that
6 is made surplus as provided in this subsection is governed by
7 section 13 of this act.

8 (5) This section shall not apply to trust water rights
9 acquired by the state through the funding of water conservation
10 projects under chapter 90.38 RCW or RCW 90.42.010 through
11 90.42.070.

12
13 NEW SECTION. Sec. 13. A new section is added to chapter
14 90.03 RCW to read as follows:

15 If a portion of the water governed by a water right is made
16 surplus to the beneficial uses exercised under the right through
17 the implementation of practices or technologies, including but not
18 limited to conveyance practices or technologies, which are more
19 efficient or more water use efficient than those under which the
20 right was perfected or through a change in the crops grown under
21 the water right, the right to use the surplus water may be changed
22 to use on other lands owned by the holder of the water right that
23 are contiguous to the lands upon which the use of the water was
24 authorized by the right before such a change. Such a change shall
25 be made without loss of priority of the right. The holder of the
26 water right shall notify the department of such a change. The
27 notification provides a change in the holder's water right and,
28 upon receiving the notification, the department shall revise its
29 records for the water right to reflect the change.

30 This section does not apply to water supplied by an irrigation
31 district.

1 **Sec. 14.** RCW 90.44.100 and 1987 c 109 s 113 are each amended
2 to read as follows:

3 (1) After an application to, and upon the issuance by the
4 department of an amendment to the appropriate permit or certificate
5 of ground water right, the holder of a valid right to withdraw
6 public ground waters may, without losing his priority of right,
7 construct wells or other means of withdrawal at a new location in
8 substitution for or in addition to those at the original location,
9 or he may change the manner or the place of use of the water (~~(+3)~~
10 ~~PROVIDED, HOWEVER, That such~~). An amendment shall be issued only
11 after publication of notice of the application and findings as
12 prescribed in the case of an original application. Such amendment
13 shall be issued by the department only on the conditions that:
14 ~~((+1))~~ (a) The additional or substitute well or wells shall tap
15 the same body of public ground water as the original well or wells;
16 ~~((+2))~~ (b) use of the original well or wells shall be discontinued
17 upon construction of the substitute well or wells; ~~((+3))~~ (c) the
18 construction of an additional well or wells shall not enlarge the
19 right conveyed by the original permit or certificate; and ~~((+4))~~
20 (d) other existing rights shall not be impaired. The department
21 may specify an approved manner of construction and shall require a
22 showing of compliance with the terms of the amendment, as provided
23 in RCW 90.44.080 in the case of an original permit.

24 (2) This section does not apply to a change in use of a
25 portion of the water governed by a ground water right that is made
26 surplus to the beneficial uses exercised under the right through
27 the implementation of practices or technologies, including but not
28 limited to conveyance technologies, which are more efficient or
29 more water use efficient than those under which the right was
30 perfected or through a change in the crops grown under the water
31 right. RCW 90.03.380(4) and section 13 of this act apply to water
32 made surplus as provided in this subsection.

1 **Sec. 15.** RCW 90.03.290 and 1994 c 264 s 84 are each amended
2 to read as follows:

3 When an application complying with the provisions of this
4 chapter and with the rules and regulations of the department has
5 been filed, the same shall be placed on record with the department,
6 and it shall be its duty to investigate the application, and
7 determine what water, if any, is available for appropriation, and
8 find and determine to what beneficial use or uses it can be
9 applied. If it is proposed to appropriate water for irrigation
10 purposes, the department shall investigate, determine and find what
11 lands are capable of irrigation by means of water found available
12 for appropriation. If it is proposed to appropriate water for the
13 purpose of power development, the department shall investigate,
14 determine and find whether the proposed development is likely to
15 prove detrimental to the public interest, having in mind the
16 highest feasible use of the waters belonging to the public. If the
17 application does not contain, and the applicant does not promptly
18 furnish sufficient information on which to base such findings, the
19 department may issue a preliminary permit, for a period of not to
20 exceed three years, requiring the applicant to make such surveys,
21 investigations, studies, and progress reports, as in the opinion of
22 the department may be necessary. If the applicant fails to comply
23 with the conditions of the preliminary permit, it and the
24 application or applications on which it is based shall be
25 automatically canceled and the applicant so notified. If the
26 holder of a preliminary permit shall, before its expiration, file
27 with the department a verified report of expenditures made and work
28 done under the preliminary permit, which, in the opinion of the
29 department, establishes the good faith, intent and ability of the
30 applicant to carry on the proposed development, the preliminary
31 permit may, with the approval of the governor, be extended, but not
32 to exceed a maximum period of five years from the date of the
33 issuance of the preliminary permit. The department shall make and

1 file as part of the record in the matter, written findings of fact
2 concerning all things investigated, and if it shall find that there
3 is water available for appropriation for a beneficial use, and the
4 appropriation thereof as proposed in the application will not
5 impair existing rights or be detrimental to the public welfare, it
6 shall issue a permit stating the amount of water to which the
7 applicant shall be entitled and the beneficial use or uses to which
8 it may be applied: PROVIDED, That where the water applied for is
9 to be used for irrigation purposes, it shall become appurtenant
10 only to such land as may be reclaimed thereby to the full extent of
11 the soil for agricultural purposes. But where there is no
12 unappropriated water in the proposed source of supply, or where the
13 proposed use conflicts with existing rights, or threatens to prove
14 detrimental to the public interest, having due regard to the
15 highest feasible development of the use of the waters belonging to
16 the public, it shall be duty of the department to reject such
17 application and to refuse to issue the permit asked for. If the
18 permit is refused because of conflict with existing rights and such
19 applicant shall acquire same by purchase or condemnation under RCW
20 90.03.040, the department may thereupon grant such permit. Any
21 application may be approved for a less amount of water than that
22 applied for, if there exists substantial reason therefor, and in
23 any event shall not be approved for more water than can be applied
24 to beneficial use for the purposes named in the application. In
25 determining whether or not a permit shall issue upon any
26 application, it shall be the duty of the department to investigate
27 all facts relevant and material to the application. After the
28 department approves said application in whole or in part and before
29 any permit shall be issued thereon to the applicant, such applicant
30 shall pay the fee provided in RCW 90.03.470: PROVIDED FURTHER,
31 That in the event a permit is issued by the department upon any
32 application, it shall be its duty to notify the director of fish
33 and wildlife of such issuance.

1 This section does not apply to changes made under section 13
2 of this act or to changes made under RCW 90.03.380(4) or
3 90.44.100(2).

4
5 **Sec. 16.** RCW 90.44.445 and 1993 c 99 s 1 are each amended to
6 read as follows:

7 In any acreage expansion program adopted by the department as
8 an element of a ground water management program, the authorization
9 for a water right certificate holder to participate in the program
10 shall be on an annual basis for the first two years. After the
11 two-year period, the department may authorize participation for
12 ten-year periods. The department may authorize participation for
13 ten-year periods for certificate holders who have already
14 participated in an acreage expansion program for two years. The
15 department may require annual certification that the certificate
16 holder has complied with all requirements of the program. The
17 department may terminate the authority of a certificate holder to
18 participate in the program for one calendar year if the certificate
19 holder fails to comply with the requirements of the program.

20 This section applies only in an area with a ground water area
21 or subarea management program in effect on the effective date of
22 this section. The provisions of section 13 of this act, RCW
23 90.03.380, and 90.44.100 apply to transfers, changes, amendments to
24 permits or rights for the beneficial use of ground water in any
25 other area."

26
27 Renumber the remaining section consecutively, correct internal
28 references accordingly, and correct the title.