

2 **SHB 2050 - H AMD 206 ADOPTED 3-14-97**

3 By Representative Mastin

4

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

7 "Sec. 1. RCW 90.03.380 and 1996 c 320 s 19 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 land  
11 or place upon which the same is used: PROVIDED, HOWEVER, That said  
12 right may be transferred to another or to others and become appurtenant  
13 to any other land or place of use without loss of priority of right  
14 theretofore established if such change can be made without detriment or  
15 injury to existing rights. The point of diversion of water for  
16 beneficial use or the purpose of use may be changed, if such change can  
17 be made without detriment or injury to existing rights. Before any  
18 transfer of such right to use water or change of the point of diversion  
19 of water or change of purpose of use can be made, any person having an  
20 interest in the transfer or change, shall file a written application  
21 therefor with the department, and said application shall not be granted  
22 until notice of said application shall be published as provided in RCW  
23 90.03.280. If it shall appear that such transfer or such change may be  
24 made without injury or detriment to existing rights, the department  
25 shall issue to the applicant a certificate in duplicate granting the  
26 right for such transfer or for such change of point of diversion or of  
27 use. The certificate so issued shall be filed and be made a record  
28 with the department and the duplicate certificate issued to the  
29 applicant may be filed with the county auditor in like manner and with  
30 the same effect as provided in the original certificate or permit to  
31 divert water.

32 (2) If an application for change proposes to transfer water rights  
33 from one irrigation district to another, the department shall, before  
34 publication of notice, receive concurrence from each of the irrigation  
35 districts that such transfer or change will not adversely affect the

1 ability to deliver water to other landowners or impair the financial  
2 integrity of either of the districts.

3 (3) A change in place of use by an individual water user or users  
4 of water provided by an irrigation district need only receive approval  
5 for the change from the board of directors of the district if the use  
6 of water continues within the irrigation district, and when water is  
7 provided by an irrigation entity that is a member of a board of joint  
8 control created under chapter 87.80 RCW, approval need only be received  
9 from the board of joint control if the use of water continues within  
10 the area of jurisdiction of the joint board and the change can be made  
11 without detriment or injury to existing rights.

12 (4) Any right represented by an application for a water right for  
13 which a permit for water use has not been issued by the time a transfer  
14 or change is approved under this section shall not be construed as  
15 being injured or detrimentally affected by the transfer or change.

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

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

21 After an application to, and upon the issuance by the department of  
22 an amendment to the appropriate permit or certificate of ground water  
23 right, the holder of a valid right to withdraw public ground waters  
24 may, without losing his priority of right, construct wells or other  
25 means of withdrawal at a new location in substitution for or in  
26 addition to those at the original location, or he may change the manner  
27 or the place of use of the water: PROVIDED, HOWEVER, That such  
28 amendment shall be issued only after publication of notice of the  
29 application and findings as prescribed in the case of an original  
30 application. Such amendment shall be issued by the department only on  
31 the conditions that: (1) The additional or substitute well or wells  
32 shall tap the same body of public ground water as the original well or  
33 wells; (2) use of the original well or wells shall be discontinued upon  
34 construction of the substitute well or wells; (3) the construction of  
35 an additional well or wells shall not enlarge the right conveyed by the  
36 original permit or certificate; and (4) other existing rights shall not  
37 be impaired. The department may specify an approved manner of  
38 construction and shall require a showing of compliance with the terms

1 of the amendment, as provided in RCW 90.44.080 in the case of an  
2 original permit.

3 Any right represented by an application for a water right for which  
4 a permit for water use has not been issued by the time an amendment is  
5 approved under this section shall not be construed as being impaired by  
6 the amendment.

7 NEW SECTION. **Sec. 3.** A new section is added to chapter 90.03 RCW  
8 to read as follows:

9 (1) In making a determination of impairment:

10 (a) The availability of water and the effect of granting a water  
11 right permit, transfer, change, or amendment are those that exist with  
12 the incorporation of the effects of any impoundment to be provided by  
13 the applicant under RCW 90.03.255 or 90.44.055 or any other water  
14 supply augmentation or mitigation to be provided by the applicant as  
15 part of his or her application for a water right permit, transfer,  
16 change, or amendment.

17 (b) The existence of hydraulic continuity between ground water and  
18 a surface body of water does not, in itself, constitute the impairment  
19 of an existing water right in the surface water body by a proposed  
20 permit for a ground water right or an amendment to a ground water  
21 right.

22 (c) The department shall take into consideration seasonal  
23 variations in water supply and in the recharge of surface and ground  
24 water bodies.

25 (d) Impairment of an existing water right in a surface body of  
26 water by a proposed permit for a ground water right or for an amendment  
27 to a ground water right does not exist if the withdrawal of water under  
28 the permit or amendment would reduce within one hundred years the  
29 supply of water to the surface water body by less than one-tenth of one  
30 percent of the annual rate of ground water withdrawal proposed under  
31 the permit or amendment. In considering the cumulative effects of  
32 multiple applications for such permits and amendments and of ground  
33 water rights that are junior to the existing water rights in the  
34 surface water body, the department may find impairment by those  
35 applications that would, taken in the order of their priority dates,  
36 cause a reduction in the supply of water to the surface water body by  
37 one percent or more within one hundred years and would, by that  
38 reduction, result in the impairment of existing water rights.

1 (2) As used in this section:

2 (a) "Determination of impairment" means a determination made by the  
3 department as to whether the issuance of a water right permit under  
4 this chapter or chapter 90.44 RCW or whether the approval of a  
5 transfer, change, or amendment under RCW 90.03.380 or 90.44.100 would  
6 injure or impair existing water rights or would conflict with or be  
7 detrimental to existing water rights;

8 (b) "Impairment" means an injury or impairment of existing water  
9 rights or a conflict with or detriment to existing water rights; and

10 (c) "Existing water rights" includes, but is not limited to, rights  
11 to the diversion, withdrawal, storage, and use of water existing before  
12 a determination of impairment, instream or base flows set by the  
13 department by rule before a determination of impairment, and any flows  
14 determined to be necessary by the department under RCW 75.20.050.

15 (3) The rule of impairment provided by subsection (1)(d) of this  
16 section is provided for water allocation decisions made by the  
17 department and is provided to adjust for the uncertainty that is  
18 inherent in evaluating the effects of proposed ground water withdrawals  
19 on surface water bodies. It does not provide a standard for reviewing  
20 any claim made by a person with a senior water right in superior court  
21 or in an appeal of a superior court decision that the person's senior  
22 water right is impaired or injured by the use of any junior water right  
23 or that the use of a junior water right conflicts with or is  
24 detrimental to the use of the person's senior water right. A decision  
25 by a superior court regarding any claim of impairment of existing water  
26 rights shall be made based on the preponderance of the evidence  
27 presented. The superior court shall consider any such claim de novo  
28 and shall not grant deference to determinations that may have been made  
29 by the department or by the pollution control hearings board regarding  
30 such a claim.

31 NEW SECTION. **Sec. 4.** A new section is added to chapter 43.21B RCW  
32 to read as follows:

33 In appeals involving a decision or order of the hearings board  
34 regarding a determination of impairment made by the department of  
35 ecology or regarding the impairment of existing water rights, the  
36 appeal to superior court shall be de novo. A decision by a superior  
37 court regarding a determination of impairment or the impairment of  
38 existing water rights shall be made based on the preponderance of the

1 evidence presented. The superior court shall not grant deference to a  
2 determination made by the department of ecology or by the pollution  
3 control hearings board regarding such a determination or such  
4 impairment. Appellate review of a decision of the superior court may  
5 be sought as in other civil cases.

6 As used in this section, "determination of impairment,"  
7 "impairment," and "existing water rights" have the meanings provided by  
8 section 3 of this act."

9 Correct the title.

--- END ---