

1 1113-S.E AMS S3218.1

2 **ESHB 1113** - S AMD - 432
3 By Senators Swecker and Morton

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

7 NEW SECTION. **Sec. 1.** The legislature finds that incentives need
8 to be established to encourage the installation of more efficient
9 irrigation conveyance and on-farm application systems and that
10 significant benefits can accrue including water quantity and water
11 quality benefits. The legislature finds that increasing the amount of
12 lands that may be irrigated under an existing water right can impact
13 the amount of return flow water available to meet the needs of other
14 existing water rights. Further, that adherence to a strict
15 nonimpairment standard has slowed efforts to make irrigation water
16 delivery systems more efficient. The legislature finds that reliance
17 on public funds to provide incentives to install efficient irrigation
18 systems is less reliable and more costly to the public than providing
19 economic incentives together with establishing compensating mechanisms
20 to protect existing rights from impairment.

21 The purpose of this act is to establish mechanisms that will
22 provide a means to test incentives for improving the efficiency of
23 irrigation water use.

24 NEW SECTION. **Sec. 2.** A new section is added to chapter 90.03 RCW
25 to read as follows:

26 RCW 90.03.380 does not apply to a change regarding a portion of the
27 water governed by a water right to appropriate surface water used for
28 agricultural purposes that is made surplus to the beneficial uses
29 exercised under the right through the implementation of practices or
30 technologies, including but not limited to conveyance practices or
31 technologies that are more efficient or more water use efficient than
32 those under which the right was perfected or through a change in the
33 crops grown under the water right. If a portion of the water governed
34 by a water right to surface water is made surplus to the beneficial
35 uses exercised under the right through the implementation of practices

1 or technologies, including but not limited to conveyance practices or
2 technologies, which are more efficient or more water use efficient than
3 those under which the right was perfected, the right to use the surplus
4 water may be changed to use on other lands owned by the holder of the
5 water right that are contiguous to the lands upon which the use of the
6 water was authorized by the right before such a change in accordance
7 with the following:

8 (1) For the purpose of calculating the amount of surplus water that
9 may be allocated to irrigate additional lands, the water right holder
10 shall assume that the amount of water per acre that is to be used to
11 irrigate the additional land is equal to the revised amount of water
12 per acre that the lands previously allowed to be irrigated under the
13 original right would receive. Once the amount of surplus water is
14 calculated in accordance with this section, the allowable quantity of
15 water that may be used to irrigate each parcel may be used on either
16 the original parcel or on the additional land without differentiation;

17 (2) Of the waters determined to be surplus to the beneficial uses
18 exercised under the right:

19 (a) Fifty percent shall be available to be used on additional land
20 and shall retain the date of priority of the original right; and

21 (b) Fifty percent shall be available to be used on additional land
22 and shall have a date of priority that is subordinate to other water
23 rights that were established as of the date the water was applied to
24 the additional land.

25 The holder of the water right shall notify the department of such
26 a change. The department may prescribe a form upon which notification
27 is to be made. The department shall establish procedures to verify the
28 information contained in the notification and may require the
29 submission of additional information to assure general compliance with
30 the provisions of this section. Such notification constitutes a change
31 in the holder's water right and, upon receiving the notification, the
32 department shall revise its records for the water right to reflect the
33 change.

34 This section does not apply to water supplied by an irrigation
35 district.

36 This section does not apply to surplus water resulting from water
37 efficiency improvements that were financed in whole or in part with
38 state funds.

1 Any person who uses this section shall not impair any existing
2 right unless compensation or mitigation for such impairment or injury
3 is agreed to by the holder of the affected water right.

4 NEW SECTION. **Sec. 3.** The definitions in this section apply
5 throughout this chapter unless the context clearly requires otherwise.

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

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

10 (3) "Net water savings" has the same meaning as defined in RCW
11 90.42.020.

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

14 (5) "Reduction in evaporative loss" means the amount of water that
15 is no longer lost to further use as a result of changing from a
16 conventional irrigation system to a water-efficient irrigation system.
17 "Reduction in evaporative loss" includes the reduction in the amount of
18 water consumed through evaporation or through transpiration by
19 nonproductive plants such as cover crops, but does not include any
20 water that contributed to return flows used to satisfy existing rights.

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

24 (7) "Water-efficient irrigation system" means a system that,
25 through technological modifications, results in water savings.

26 NEW SECTION. **Sec. 4.** A person holding a valid water right or
27 contractual right to use water, who finances the installation of a
28 water-efficient irrigation system, may enter into a contract with
29 another person for the transfer of water saved through installation of
30 the water-efficient irrigation system. In determining the amount that
31 is transferrable, the department shall allow the transfer of an amount
32 equal to the reduction in the evaporative loss. The reduction in
33 evaporative loss is a readily transferrable component of net water
34 savings.

35 In addition, the department shall evaluate whether there are
36 additional net water savings that result directly from installation of
37 the water-efficient irrigation system that could be transferred to the

1 purchaser without detriment to other existing water users. The
2 department may not delay because of decisions on the determination of
3 additional net water savings the approval of the transfer of the water
4 that constitutes the reduction in evaporative loss. The use of water
5 supplied by an irrigation district that is saved through installation
6 of a qualifying water-efficient irrigation system as provided in this
7 section shall be regulated solely as provided by the board of directors
8 of the irrigation district.

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

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

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

21 NEW SECTION. **Sec. 5.** The department may adopt rules, in
22 accordance with chapter 34.05 RCW, for procedures to be used to
23 facilitate the processing of requests for water right transfers made
24 under this chapter and to establish a streamlined procedure to quantify
25 the reduction in the evaporative loss. In developing streamlined
26 procedures, the department may use data from the United States natural
27 resource conservation service or the Washington state cooperative
28 extension service to base calculations of reduction in evaporative loss
29 in various regions of the state.

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

33 NEW SECTION. **Sec. 6.** An applicant shall accompany an application
34 for a water right transfer under this chapter with a fee established in
35 RCW 90.03.470.

1 NEW SECTION. **Sec. 7.** 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 embodied in the
7 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. 8.** A holder of a water right may voluntarily
12 enter into a contract with the department. The department may utilize
13 funds that are now or hereafter authorized for the purchase of water
14 savings made available under this chapter. The department shall
15 utilize the same methods of calculating water that is transferrable to
16 another party under this chapter in determining the amount of water
17 that is transferrable to the state. If additional net water saved is
18 available for the benefit of only a stream segment, the calculations
19 may be made on a case-by-case basis while assuring no detriment to
20 existing water users occurs.

21 NEW SECTION. **Sec. 9.** A valid water right user who installs a
22 water-efficient 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. 10.** This chapter may be known and cited as the
29 agricultural water conservation incentives act.

30 **Sec. 11.** RCW 90.03.380 and 1996 c 320 s 19 are each amended to
31 read as follows:

32 (1) The right to the use of water which has been applied to a
33 beneficial use in the state shall be and remain appurtenant to the land
34 or place upon which the same is used~~((:—PROVIDED, HOWEVER, That~~
35 said))~~.~~ However, all or a portion of a right may be transferred to

1 another or to others and become appurtenant to any other land or place
2 of use without loss of priority of right theretofore established if
3 such change can be made without detriment or injury to existing rights.
4 The point of diversion of water for beneficial use or the purpose of
5 use may be changed, if such change can be made without detriment or
6 injury to existing rights. A change in the place of use, point of
7 diversion, and/or purpose of use of a water right to enable irrigation
8 of additional acreage or the addition of new uses may be permitted if
9 such change results in no increase in the annual consumptive quantity
10 of water used under the water right. For purposes of this section,
11 "annual consumptive quantity" means the estimated or actual annual
12 amount of water diverted pursuant to the water right, reduced by the
13 estimated annual amount of return flows, averaged over the most recent
14 five-year period of continuous beneficial use of the water right.
15 Before any transfer of such right to use water or change of the point
16 of diversion of water or change of purpose of use can be made, any
17 person having an interest in the transfer or change, shall file a
18 written application therefor with the department, and said application
19 shall not be granted until notice of said application shall be
20 published as provided in RCW 90.03.280. If it shall appear that such
21 transfer or such change may be made without injury or detriment to
22 existing rights, the department shall issue to the applicant an
23 authorization to make the change or transfer. When the applicant has
24 completed the change or transfer, the department shall issue to the
25 applicant a certificate in duplicate granting the right for such
26 transfer or for such change of point of diversion or of use. The
27 certificate so issued shall be filed and be made a record with the
28 department and the duplicate certificate issued to the applicant may be
29 filed with the county auditor in like manner and with the same effect
30 as provided in the original certificate or permit to divert water.

31 (2) If an application for change proposes to transfer water rights
32 from one irrigation district to another, the department shall, before
33 publication of notice, receive concurrence from each of the irrigation
34 districts that such transfer or change will not adversely affect the
35 ability to deliver water to other landowners or impair the financial
36 integrity of either of the districts.

37 (3) A change in place of use by an individual water user or users
38 of water provided by an irrigation district need only receive approval
39 for the change from the board of directors of the district if the use

1 of water continues within the irrigation district, and when water is
2 provided by an irrigation entity that is a member of a board of joint
3 control created under chapter 87.80 RCW, approval need only be received
4 from the board of joint control if the use of water continues within
5 the area of jurisdiction of the joint board and the change can be made
6 without detriment or injury to existing rights. The board of directors
7 of an irrigation district may approve such a change if the board
8 determines that the change: Will not adversely affect the district's
9 ability to deliver water to other landowners; will not require the
10 construction by the district of diversion or drainage facilities unless
11 the board finds that the construction by the district is in the
12 interest of the district; will not impair the financial or operational
13 integrity of the district; and is consistent with the contractual
14 obligations of the district.

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

18 **Sec. 12.** RCW 90.44.100 and 1987 c 109 s 113 are each amended to
19 read as follows:

20 After an application to, and upon the issuance by the department of
21 an amendment to the appropriate permit or certificate of ground water
22 right, the holder of a valid right to withdraw public ground waters
23 may, without losing his priority of right, construct wells or other
24 means of withdrawal at a new location in substitution for or in
25 addition to those at the original location, or he may change the manner
26 or the place of use of the water: PROVIDED, HOWEVER, That such
27 amendment shall be issued only after publication of notice of the
28 application and findings as prescribed in the case of an original
29 application. Such amendment shall be issued by the department only on
30 the conditions that: (1) The additional or substitute well or wells
31 shall tap the same body of public ground water as the original well or
32 wells; (2) use of the original well or wells shall be discontinued upon
33 construction of the substitute well or wells; (3) the construction of
34 an additional well or wells shall not enlarge the right conveyed by the
35 original permit or certificate; and (4) other existing rights shall not
36 be impaired. The department may specify an approved manner of
37 construction and shall require a showing of compliance with the terms
38 of the amendment, as provided in RCW 90.44.080 in the case of an

1 original permit. An amendment to a permit or certificate to change the
2 place of use, point of withdrawal, and/or purpose of use of a ground
3 water right to enable irrigation of additional acreage or the addition
4 of new uses may be issued if such change results in no increase in the
5 annual consumptive quantity of water used or authorized for use under
6 the ground water right. For purposes of this section, "annual
7 consumptive quantity" means the estimated or actual annual amount of
8 water withdrawn or authorized for withdrawal pursuant to the ground
9 water right reduced by the estimated annual amount of return flows.
10 For permits or certificates under which actual amounts of water have
11 been withdrawn, withdrawals and return flows shall be averaged over the
12 most recent five-year period of continuous beneficial use of the ground
13 water right or, if the period of actual continuous beneficial use is
14 less than five years, such lesser period.

15 NEW SECTION. Sec. 13. The department of ecology shall submit a
16 report to the legislature by December 1, 2000, containing the results
17 of activities authorized under this act.

18 NEW SECTION. Sec. 14. Sections 3 through 10 of this act
19 constitute a new chapter in Title 90 RCW.

20 NEW SECTION. Sec. 15. Sections 1 through 10 of this act expire
21 June 30, 2001."

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25 On page 1, line 1 of the title, after "changes;" strike the
26 remainder of the title and insert "amending RCW 90.03.380 and
27 90.44.100; adding a new section to chapter 90.03 RCW; adding a new
28 chapter to Title 90 RCW; creating new sections; and providing an
29 expiration date."

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