

2 **ESHB 1113** - S COMM AMD

3 By Committee on Agriculture & Environment

4 NOT ADOPTED 4/17/97

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

7 "NEW SECTION. **Sec. 1.** The legislature finds that there is a  
8 significant number of high-value horticultural crops that can be grown  
9 utilizing water-efficient irrigation systems. The legislature finds  
10 that over a period of several years, existing orchard plantings will be  
11 revitalized and replaced with new plantings, and that additional  
12 orchards will be planted which provide opportunities for improved water  
13 efficiency.

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

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

32 NEW SECTION. **Sec. 2.** The definitions in this section apply  
33 throughout this chapter unless the context clearly requires otherwise.

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

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

5 (3) "Net water savings" has the same meaning as defined in RCW  
6 90.42.020.

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

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

16 (6) "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 (7) "Water-efficient irrigation system" means a system that,  
20 through technological modifications, results in water savings.

21 NEW SECTION. **Sec. 3.** A person holding a valid water right or  
22 contractual right to use water, who finances the installation of a  
23 water-efficient irrigation system, may enter into a contract with  
24 another person for the transfer of water saved through installation of  
25 the water-efficient irrigation system. In determining the amount that  
26 is transferrable, the department shall allow the transfer of an amount  
27 equal to the reduction in the evaporative loss. The reduction in  
28 evaporative loss is a readily transferrable component of net water  
29 savings.

30 In addition, the department shall evaluate whether there are  
31 additional net water savings that result directly from installation of  
32 the water-efficient irrigation system that could be transferred to the  
33 purchaser without detriment to other existing water users. The  
34 department may not delay because of decisions on the determination of  
35 additional net water savings the approval of the transfer of the water  
36 that constitutes the reduction in evaporative loss. The use of water  
37 supplied by an irrigation district that is saved through installation  
38 of a qualifying water-efficient irrigation system as provided in this

1 section shall be regulated solely as provided by the board of directors  
2 of the irrigation district.

3 A person wishing to make application for a transfer of a water  
4 right under this chapter shall comply with RCW 90.03.380. A contract  
5 may allow for a permanent transfer of a portion of the original water  
6 right, or for lease agreements with set expiration dates. The  
7 applicant shall state that the contract is not permanent in the  
8 application if the contract is not permanent.

9 The transferred portion has the same date of priority as the water  
10 right from which it originated, but between them the transferred  
11 portion of the right is inferior in priority unless otherwise provided  
12 by the parties in the contract.

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

15 NEW SECTION. **Sec. 4.** The department may adopt rules, in  
16 accordance with chapter 34.05 RCW, for procedures to be used to  
17 facilitate the processing of requests for water right transfers made  
18 under this chapter and to establish a streamlined procedure to quantify  
19 the reduction in the evaporative loss. In developing streamlined  
20 procedures, the department may use data from the United States natural  
21 resource conservation service or the Washington state cooperative  
22 extension service to base calculations of reduction in evaporative loss  
23 in various regions of the state.

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

27 NEW SECTION. **Sec. 5.** An applicant shall accompany an application  
28 for a water right transfer under this chapter with a fee established in  
29 RCW 90.03.470.

30 NEW SECTION. **Sec. 6.** In processing applications for transfers of  
31 portions of water rights under this chapter, if the department is  
32 unable to conclusively determine the validity of the original water  
33 right, the department may include a presumption of validity in the  
34 certificate of water rights. The presumption must provide to the  
35 contract purchaser the same right to the use of water embodied in the  
36 original water right.

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

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

14 NEW SECTION. **Sec. 8.** A valid water right user who installs a  
15 water-efficient irrigation system may apply for a transfer of the  
16 reduction in evaporative loss, plus any additional net water savings,  
17 for the irrigation of an additional parcel of previously unirrigated  
18 land, to land with less senior water rights, or that lacks a full and  
19 sufficient supply. The application must be processed based upon the  
20 same criteria as if the transfer were to be made to another person.

21 NEW SECTION. **Sec. 9.** This chapter may be known and cited as the  
22 agricultural water conservation incentives act.

23 **Sec. 10.** RCW 90.03.380 and 1996 c 320 s 19 are each amended to  
24 read as follows:

25 (1) The right to the use of water which has been applied to a  
26 beneficial use in the state shall be and remain appurtenant to the land  
27 or place upon which the same is used(~~(:—PROVIDED, HOWEVER, That~~  
28 said)). However, all or a portion of a right may be transferred to  
29 another or to others and become appurtenant to any other land or  
30 additional place of use without loss of priority of right theretofore  
31 established if such change can be made without detriment or injury to  
32 existing rights. The point of diversion of water for beneficial use or  
33 the purpose of use may be changed, if such change can be made without  
34 detriment or injury to existing rights. A change in the place of use,  
35 point of diversion, and/or purpose of use of a water right to enable

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

24 (2) If an application for change proposes to transfer water rights  
25 from one irrigation district to another, the department shall, before  
26 publication of notice, receive concurrence from each of the irrigation  
27 districts that such transfer or change will not adversely affect the  
28 ability to deliver water to other landowners or impair the financial  
29 integrity of either of the districts.

30 (3) A change in place of use by an individual water user or users  
31 of water provided by an irrigation district need only receive approval  
32 for the change from the board of directors of the district if the use  
33 of water continues within the irrigation district, and when water is  
34 provided by an irrigation entity that is a member of a board of joint  
35 control created under chapter 87.80 RCW, approval need only be received  
36 from the board of joint control if the use of water continues within  
37 the area of jurisdiction of the joint board and the change can be made  
38 without detriment or injury to existing rights. The board of directors  
39 of an irrigation district may approve such a change if the board

1 determines that the change: Will not adversely affect the district's  
2 ability to deliver water to other landowners; will not require the  
3 construction by the district of diversion or drainage facilities unless  
4 the board finds that the construction by the district is in the  
5 interest of the district; will not impair the financial or operational  
6 integrity of the district; and is consistent with the contractual  
7 obligations of the district.

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

11 **Sec. 11.** RCW 90.44.100 and 1987 c 109 s 113 are each amended to  
12 read as follows:

13 After an application to, and upon the issuance by the department of  
14 an amendment to the appropriate permit or certificate of ground water  
15 right, the holder of a valid right to withdraw public ground waters  
16 may, without losing his priority of right, construct wells or other  
17 means of withdrawal at a new location in substitution for or in  
18 addition to those at the original location, or he may change the manner  
19 or the place of use of the water: PROVIDED, HOWEVER, That such  
20 amendment shall be issued only after publication of notice of the  
21 application and findings as prescribed in the case of an original  
22 application. Such amendment shall be issued by the department only on  
23 the conditions that: (1) The additional or substitute well or wells  
24 shall tap the same body of public ground water as the original well or  
25 wells; (2) use of the original well or wells shall be discontinued upon  
26 construction of the substitute well or wells; (3) the construction of  
27 an additional well or wells shall not enlarge the right conveyed by the  
28 original permit or certificate; and (4) other existing rights shall not  
29 be impaired. The department may specify an approved manner of  
30 construction and shall require a showing of compliance with the terms  
31 of the amendment, as provided in RCW 90.44.080 in the case of an  
32 original permit. An amendment to a permit or certificate to change the  
33 place of use, point of withdrawal, and/or purpose of use of a ground  
34 water right to enable irrigation of additional acreage or the addition  
35 of new uses may be issued if such change results in no increase in the  
36 annual consumptive quantity of water used or authorized for use under  
37 the ground water right. For purposes of this section, "annual  
38 consumptive quantity" means the estimated or actual annual amount of

1 water withdrawn or authorized for withdrawal pursuant to the ground  
2 water right reduced by the estimated annual amount of return flows.  
3 For permits or certificates under which actual amounts of water have  
4 been withdrawn, withdrawals and return flows shall be averaged over the  
5 most recent five-year period of continuous beneficial use of the ground  
6 water right or, if the period of actual continuous beneficial use is  
7 less than five years, such lesser period.

8 NEW SECTION. Sec. 12. Sections 2 through 9 of this act constitute  
9 a new chapter in Title 90 RCW.

10 NEW SECTION. Sec. 13. This act is necessary for the immediate  
11 preservation of the public peace, health, or safety, or support of the  
12 state government and its existing public institutions, and takes effect  
13 July 1, 1997."

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17 On page 1, line 1 of the title, after "changes;" strike the  
18 remainder of the title and insert "amending RCW 90.03.380 and  
19 90.44.100; adding a new chapter to Title 90 RCW; creating a new  
20 section; providing an effective date; and declaring an emergency."

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