

2 **ESHB 1113** - S AMD - 412  
3 By Senator Morton

4 PULLED 4/17/97

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 (3) This section expires June 3, 2001.

5 **Sec. 3.** RCW 90.03.380 and 1996 c 320 s 19 are each amended to read  
6 as follows:

7 (1) The right to the use of water which has been applied to a  
8 beneficial use in the state shall be and remain appurtenant to the land  
9 or place upon which the same is used(~~(:—PROVIDED, HOWEVER, That~~  
10 said)). However, all or a portion of a right may be transferred to  
11 another or to others and become appurtenant to any other land or  
12 additional place of use without loss of priority of right theretofore  
13 established if such change can be made without detriment or injury to  
14 existing rights. The point of diversion of water for beneficial use or  
15 the purpose of use may be changed, if such change can be made without  
16 detriment or injury to existing rights. A change in the place of use,  
17 point of diversion, and/or purpose of use of a water right to enable  
18 irrigation of additional acreage or the addition of new uses may be  
19 permitted if such change results in no increase in the annual  
20 consumptive quantity of water used under the water right. For purposes  
21 of this section, "annual consumptive quantity" means the estimated or  
22 actual annual amount of water diverted pursuant to the water right,  
23 reduced by the estimated annual amount of return flows, averaged over  
24 the most recent five-year period of continuous beneficial use of the  
25 water right. Before any transfer of such right to use water or change  
26 of the point of diversion of water or change of purpose of use can be  
27 made, any person having an interest in the transfer or change, shall  
28 file a written application therefor with the department, and said  
29 application shall not be granted until notice of said application shall  
30 be published as provided in RCW 90.03.280. If it shall appear that  
31 such transfer or such change may be made without injury or detriment to  
32 existing rights, the department shall issue to the applicant an  
33 authorization to make the change or transfer. When the applicant has  
34 completed the change or transfer, the department shall issue to the  
35 applicant a certificate in duplicate granting the right for such  
36 transfer or for such change of point of diversion or of use. The  
37 certificate so issued shall be filed and be made a record with the  
38 department and the duplicate certificate issued to the applicant may be

1 filed with the county auditor in like manner and with the same effect  
2 as provided in the original certificate or permit to divert water.

3 (2) If an application for change proposes to transfer water rights  
4 from one irrigation district to another, the department shall, before  
5 publication of notice, receive concurrence from each of the irrigation  
6 districts that such transfer or change will not adversely affect the  
7 ability to deliver water to other landowners or impair the financial  
8 integrity of either of the districts.

9 (3) A change in place of use by an individual water user or users  
10 of water provided by an irrigation district need only receive approval  
11 for the change from the board of directors of the district if the use  
12 of water continues within the irrigation district, and when water is  
13 provided by an irrigation entity that is a member of a board of joint  
14 control created under chapter 87.80 RCW, approval need only be received  
15 from the board of joint control if the use of water continues within  
16 the area of jurisdiction of the joint board and the change can be made  
17 without detriment or injury to existing rights. The board of directors  
18 of an irrigation district may approve such a change if the board  
19 determines that the change: Will not adversely affect the district's  
20 ability to deliver water to other landowners; will not require the  
21 construction by the district of diversion or drainage facilities unless  
22 the board finds that the construction by the district is in the  
23 interest of the district; will not impair the financial or operational  
24 integrity of the district; and is consistent with the contractual  
25 obligations of the district.

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

29 **Sec. 4.** RCW 90.44.100 and 1987 c 109 s 113 are each amended to  
30 read as follows:

31 After an application to, and upon the issuance by the department of  
32 an amendment to the appropriate permit or certificate of ground water  
33 right, the holder of a valid right to withdraw public ground waters  
34 may, without losing his priority of right, construct wells or other  
35 means of withdrawal at a new location in substitution for or in  
36 addition to those at the original location, or he may change the manner  
37 or the place of use of the water: PROVIDED, HOWEVER, That such  
38 amendment shall be issued only after publication of notice of the

1 application and findings as prescribed in the case of an original  
2 application. Such amendment shall be issued by the department only on  
3 the conditions that: (1) The additional or substitute well or wells  
4 shall tap the same body of public ground water as the original well or  
5 wells; (2) use of the original well or wells shall be discontinued upon  
6 construction of the substitute well or wells; (3) the construction of  
7 an additional well or wells shall not enlarge the right conveyed by the  
8 original permit or certificate; and (4) other existing rights shall not  
9 be impaired. The department may specify an approved manner of  
10 construction and shall require a showing of compliance with the terms  
11 of the amendment, as provided in RCW 90.44.080 in the case of an  
12 original permit. An amendment to a permit or certificate to change the  
13 place of use, point of withdrawal, and/or purpose of use of a ground  
14 water right to enable irrigation of additional acreage or the addition  
15 of new uses may be issued if such change results in no increase in the  
16 annual consumptive quantity of water used or authorized for use under  
17 the ground water right. For purposes of this section, "annual  
18 consumptive quantity" means the estimated or actual annual amount of  
19 water withdrawn or authorized for withdrawal pursuant to the ground  
20 water right reduced by the estimated annual amount of return flows.  
21 For permits or certificates under which actual amounts of water have  
22 been withdrawn, withdrawals and return flows shall be averaged over the  
23 most recent five-year period of continuous beneficial use of the ground  
24 water right or, if the period of actual continuous beneficial use is  
25 less than five years, such lesser period.

26 NEW SECTION. Sec. 5. The department of ecology shall submit a  
27 report to the legislature by December 1, 2000, containing the results  
28 of activities authorized under this act."

29 **ESHB 1113** - S AMD - 412  
30 By Senator Morton

31

32 On page 1, line 1 of the title, after "changes;" strike the  
33 remainder of the title and insert "amending RCW 90.03.380 and

1 90.44.100; adding a new section to chapter 90.03 RCW; creating new  
2 sections; and providing an expiration date."

--- END ---