

2 **SHB 1272** - S COMM AMD

3 By Committee on Agriculture & Environment

4 ADOPTED AS AMENDED 4/14/97

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

7 NEW SECTION. **Sec. 1.** The legislature finds:

8 (1) Voluntary water transfers between water users can reallocate
9 water use in a manner that will result in more efficient use of water
10 resources;

11 (2) Voluntary water transfers can help alleviate water shortages,
12 save capital outlays, reduce development costs, and provide an
13 incentive for investment in water conservation efforts by water right
14 holders; and

15 (3) The state should expedite the administrative process for
16 noncontested water transfers among water right holders, conveying
17 greater operational control to water managers and water right holders.

18 NEW SECTION. **Sec. 2.** The following definitions apply throughout
19 this chapter, unless the context clearly requires otherwise.

20 (1) "Board" means a water conservancy board created under this
21 chapter.

22 (2) "Commissioner" means a member of a water conservancy board.

23 (3) "Department" means the department of ecology.

24 (4) "Director" means the director of the department of ecology.

25 NEW SECTION. **Sec. 3.** (1) The county legislative authority of a
26 county may create a water conservancy board, subject to approval by the
27 director, for the purpose of expediting voluntary water transfers
28 within the county.

29 (2) A water conservancy board may be initiated by: (a) A
30 resolution of the county legislative authority; (b) a resolution
31 presented to the county legislative authority calling for the creation
32 of a board by the legislative authority of an irrigation district,
33 public utility district that operates a public water system, a
34 reclamation district, a city operating a public water system, or a

1 water-sewer district that operates a public water system; (c) a
2 resolution by the governing body of a cooperative or mutual corporation
3 that operates a public water system serving one hundred or more
4 accounts; (d) a petition signed by five or more water rights holders,
5 including their addresses, who divert water for use within the county;
6 or (e) any combination of (a) through (d) of this subsection. The
7 resolution or petition must state the need for the board, include
8 proposed bylaws or rules and procedures that will govern the operation
9 of the board, identify the geographic boundaries where there is an
10 initial interest in transacting water sales or transfers, and describe
11 the proposed method for funding the operation of the board.

12 (3) After receiving a resolution or petition to create a board, a
13 county legislative authority shall determine its sufficiency. If the
14 county legislative authority finds that the resolution or petition is
15 sufficient, or if the county is initiating the creation of a board upon
16 its own motion, it shall hold at least one public hearing on the
17 proposed creation of the board. Notice of the hearing shall be
18 published at least once in a newspaper of general circulation in the
19 county not less than ten days nor more than thirty days before the date
20 of the hearing. The notice shall describe the time, date, place, and
21 purpose of the hearing, as well as the purpose of the board. Following
22 the hearing, the county legislative authority may adopt a resolution
23 approving the creation of the board if it finds that the board's
24 creation is in the public interest.

25 NEW SECTION. **Sec. 4.** (1) The county legislative authority shall
26 forward a copy of the resolution or petition calling for the creation
27 of the board, a copy of the resolution approving the creation of the
28 board, and a summary of the public testimony presented at the public
29 hearing to the director following the adoption of the resolution
30 calling for the board's creation.

31 (2) The director shall approve or deny the creation of a board
32 within forty-five days after the county legislative authority has
33 submitted all information required under subsection (1) of this
34 section. The director must determine whether the creation of the board
35 would further the purposes of this chapter and is in the public
36 interest. The director shall include a description of the necessary
37 training requirements for commissioners in the notice of approval sent
38 to the county legislative authority.

1 NEW SECTION. **Sec. 5.** The director of the department may, as
2 deemed necessary by the director, adopt rules in accordance with
3 chapter 34.05 RCW necessary to carry out this chapter, including
4 minimum requirements for the training and continuing education of
5 commissioners. Training courses for commissioners shall include an
6 overview of state water law and hydrology. Prior to commissioners
7 taking action on proposed water right transfers, the commissioners
8 shall comply with training requirements that include state water law
9 and hydrology.

10 NEW SECTION. **Sec. 6.** A water conservancy board constitutes a
11 public body corporate and politic and a separate unit of local
12 government in the state. Each board shall consist of three
13 commissioners appointed by the county legislative authority for six-
14 year terms. The county legislative authority shall stagger the initial
15 appointment of commissioners so that the first commissioners who are
16 appointed shall serve terms of two, four, and six years, respectively,
17 from the date of their appointment. All vacancies shall be filled for
18 the unexpired term. The county legislative authority shall consider,
19 but is not limited in appointing, nominations to the board by people or
20 entities petitioning or requesting the creation of the board. However,
21 the county legislative authority shall ensure that individual water
22 right holders who divert water for use within the county are
23 represented on the board. In making appointments to the board, the
24 county legislative authority shall choose from among persons who are
25 residents of the county or a county that is contiguous to the county
26 that the water conservancy board is to serve. No commissioner may
27 participate in board decisions until he or she has successfully
28 completed the necessary training required under section 5 of this act.
29 Commissioners shall serve without compensation, but are entitled to
30 reimbursement for necessary travel expenses in accordance with RCW
31 43.03.050 and 43.03.060 and costs incident to training.

32 NEW SECTION. **Sec. 7.** (1) A water conservancy board may acquire,
33 purchase, hold, lease, manage, occupy, and sell real and personal
34 property or any interest therein, enter into and perform all necessary
35 contracts, appoint and employ necessary agents and employees and fix
36 their compensation, employ contractors including contracts for

1 professional services, sue and be sued, and do any and all lawful acts
2 required and expedient to carry out the purposes of this chapter.

3 (2) A board constitutes an independently funded entity, and may
4 provide for its own funding as determined by the commissioners. The
5 board may accept grants and may adopt fees for processing applications
6 for transfers of water rights to fund the activities of the board. A
7 board may not impose taxes or acquire property by the exercise of
8 eminent domain.

9 NEW SECTION. **Sec. 8.** A board shall operate on a county-wide
10 basis, and shall have the following powers, in addition to any others
11 granted in this chapter:

12 (1) A board may establish a water transfer exchange through which
13 all or part of the water that any person is entitled to use by reason
14 of owning or holding a water right may be listed for sale or transfer.
15 The board may approve water transfers involving a change in place of
16 use, point of diversion or withdrawal, purpose of use, time of use,
17 source of supply, quantity of use permitted, and the place of storage.
18 Any water transfer approved by the board is subject to final approval
19 by the director pursuant to section 11 of this act.

20 (2) The board may approve the transfer of a water right or a water
21 right claim filed under chapter 90.14 RCW that has not been
22 adjudicated. The board shall make a tentative determination as to the
23 validity and extent of the existing right, and may only approve
24 transfers of those rights to the extent they are deemed valid by the
25 board. Neither the board's approval of a transfer, nor the director's
26 approval of the board's action constitutes an adjudication of the
27 validity, priority, or quantity of the transferor's water right as
28 between the transferor or the transferee and the state, or as between
29 the transferor or the transferee and one or more water use claimants,
30 and such approvals do not preclude or prejudice a subsequent challenge
31 to the validity, priority, or quantity of the right in an adjudicatory
32 proceeding. The tentative determination of a water right by a board
33 does not preclude a different conclusion in a subsequent adjudication.

34 (3) Water transfers approved by the board must remain within an
35 existing category of beneficial use, and a transfer of water that is
36 being used for agricultural applications is restricted to short-term or
37 long-term leases.

1 (4) Each board shall maintain and publish all information made
2 available to it concerning water rights listed with the board and any
3 application to the board for approval of a water transfer. Each board
4 shall establish policies and procedures, consistent with applicable
5 law, for the administration of a system of timely local approvals for
6 water transfers under this chapter. The administration shall be
7 performed exclusively by the board, but the department may provide
8 technical assistance to the board.

9 NEW SECTION. **Sec. 9.** (1) Applications to the board for transfers
10 shall be made on a form provided by the department, and shall contain
11 such additional information as may be required by the board in order to
12 review and act upon the application. At a minimum, the application
13 shall include information sufficient to establish to the board's
14 satisfaction of the transferor's right to the quantity of water being
15 transferred, and a description of any applicable limitations on the
16 right to use water, including the point of diversion or withdrawal,
17 place of use, source of supply, purpose of use, quantity of use
18 permitted, time of use, period of use, and the place of storage.

19 (2) The transferor and the transferee of any proposed water
20 transfer may apply to a board for approval of the transfer if the water
21 proposed to be transferred is currently diverted or used within the
22 geographic boundaries of the county, or would be diverted or used
23 within the geographic boundaries of the county if the transfer is
24 approved. In the case of a proposed water transfer in which the water
25 is currently diverted or would be diverted outside the geographic
26 boundaries of the county, the board shall hold a public hearing in the
27 county of the diversion or proposed diversion. The board shall provide
28 for prominent publication of notice of such hearing in a newspaper of
29 general circulation published in the county in which the hearing is to
30 be held for the purpose of affording an opportunity for interested
31 persons to comment upon the application.

32 (3) After an application for a transfer is filed with the board,
33 the board shall publish notice of the application in accordance with
34 the publication requirements and send notice to state agencies as
35 provided in RCW 90.03.280. Any person may submit comments to the board
36 regarding the application. Any water right holder claiming detriment
37 or injury to an existing water right may intervene in the application
38 before the board pursuant to subsection (4) of this section. If a

1 majority of the board determines that the application is complete, in
2 accordance with the law and the transfer can be made without injury or
3 detriment to existing water rights in accordance with RCW 90.03.380,
4 the board shall issue the applicant a certificate conditionally
5 approving the transfer, subject to review by the director.

6 (4) If a water right holder claims a proposed transfer will cause
7 an impairment to that right, the water right holder is entitled to a
8 hearing before the board. The board shall receive such evidence as it
9 deems material and necessary to determine the validity of the claim of
10 impairment. If the party claiming the impairment establishes by a
11 preponderance of the evidence that his or her water right will be
12 impaired by the proposed transfer, the board may not approve the
13 transfer unless the applicant and the impaired party agree upon
14 compensation for the impairment.

15 NEW SECTION. **Sec. 10.** (1) If an application for a transfer is
16 proposed to transfer water from one irrigation district to another,
17 approval of the transfer shall be conditioned upon receipt of the
18 concurrence from each of the irrigation districts that the transfer
19 will not adversely affect the ability to deliver water to other
20 landowners or impair the financial integrity of either of the
21 districts.

22 (2) A transfer involving a change in place or use or a
23 nonconsumptive use by an individual water user or users of water
24 provided by an irrigation district need only receive the approval for
25 the transfer from the board of directors of the irrigation district if
26 the water continues within the irrigation district.

27 NEW SECTION. **Sec. 11.** (1) If a transfer is approved by the board,
28 the board shall submit a copy of the proposed certificate conditionally
29 approving the transfer to the department for review. The board shall
30 also submit a report summarizing any factual findings on which the
31 board relied in deciding to approve the proposed transfer. The board
32 shall also transmit notice by mail to any person who objected to the
33 transfer or who requested notice.

34 (2) The director shall review each proposed transfer conditionally
35 approved by a board for compliance with state water transfer laws
36 including RCW 90.03.380, 90.03.390, and 90.44.100, rules and guidelines
37 adopted by the department, and other applicable law.

1 (3) Any party to a transfer or a third party who alleges his or her
2 water right will be impaired by the proposed transfer may file
3 objections with the department. If objections to the transfer are
4 filed with the department, the board shall forward the files and
5 records upon which it based its decision to the department.

6 (4) The director shall review the action of the board and affirm,
7 reverse, or modify the action of the board within forty-five days of
8 receipt. The forty-five day time period may be extended for an
9 additional thirty days by the director, upon the consent of the parties
10 to the transfer. If the director fails to act within this time period,
11 the board's action is final. Upon approval of a water transfer by the
12 action or nonaction of the director, the conditional certificate issued
13 by the board is final and valid.

14 NEW SECTION. **Sec. 12.** The decision of the director to approve an
15 action to create a board, or to approve, deny, or modify a water
16 transfer either by action or nonaction shall be appealable in the same
17 manner as other water right decisions made pursuant to chapter 90.03
18 RCW.

19 NEW SECTION. **Sec. 13.** Neither the county nor the department shall
20 be subject to any cause of action or claim for damages arising out of
21 transfers approved by a board under this chapter.

22 NEW SECTION. **Sec. 14.** A person who, in good faith and without
23 intent of circumventing water right relinquishment statutes, leases a
24 water right under this chapter may not lose any portion of that water
25 right by relinquishment due to the nonuse of the water by the lessee.

26 NEW SECTION. **Sec. 15.** Nothing in this chapter eliminates or
27 lessens the requirements necessary for the approval of interties.

28 NEW SECTION. **Sec. 16.** (1) A commissioner of a water conservancy
29 board who has an ownership interest in a water right subject to an
30 application for approval of a transfer or change by the board, shall
31 not participate in the board's review or decision upon the application.

32 (2) A commissioner of a water conservancy board who also serves as
33 an employee or upon the governing body of a municipally owned water
34 system, shall not participate in the board's review or decision upon an

1 application for the transfer or change of a water right in which that
2 water system has or is proposed to have an ownership interest.

3 NEW SECTION. **Sec. 17.** Water conservancy board activities are
4 subject to the open public meetings act, chapter 42.30 RCW.

5 NEW SECTION. **Sec. 18.** Nothing in this chapter affects transfers
6 that may be otherwise approved under chapter 90.03 RCW.

7 NEW SECTION. **Sec. 19.** The department shall report biennially by
8 December 31st of each even-numbered year to the appropriate committees
9 of the legislature on the boards formed or sought to be formed under
10 the authority of this chapter, the transfer applications reviewed and
11 other activities conducted by the boards, and the funding of such
12 boards.

13 NEW SECTION. **Sec. 20.** If any provision of this act or its
14 application to any person or circumstance is held invalid, the
15 remainder of the act or the application of the provision to other
16 persons or circumstances is not affected.

17 NEW SECTION. **Sec. 21.** Sections 1 through 19 of this act
18 constitute a new chapter in Title 90 RCW."

19 **SHB 1272** - S COMM AMD
20 By Committee on Agriculture & Environment

21 ADOPTED AS AMENDED 4/14/97

22 On page 1, line 1 of the title, after "transfers;" strike the
23 remainder of the title and insert "and adding a new chapter to Title 90
24 RCW."

--- END ---