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ENGROSSED SUBSTITUTE HOUSE BILL 1113

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State of Washington

55th Legislature

1997 Regular Session

By House Committee on Agriculture & Ecology (originally sponsored by Representatives Chandler, Mastin, McMorris, Koster, Delvin, Mulliken, Johnson, Schoesler and Honeyford)

Read first time 02/13/97.

1 AN ACT Relating to water transfers and changes; amending RCW  
2 90.03.380, 90.44.100, 90.03.290, and 90.44.445; and adding a new  
3 section to chapter 90.03 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** 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 (~~said~~)  
10 the right may be transferred to another or to others and become  
11 appurtenant to any other land or place of use without loss of priority  
12 of right theretofore established if such change can be made without  
13 detriment or injury to existing rights. The point of diversion of  
14 water for beneficial use or the purpose of use may be changed, if such  
15 change can be made without detriment or injury to existing rights.  
16 Before any transfer of such right to use water or change of the point  
17 of diversion of water or change of purpose of use can be made, any  
18 person having an interest in the transfer or change, shall file a  
19 written application therefor with the department, and (~~said~~) the

1 application shall not be granted until notice of ~~((said))~~ the  
2 application ~~((shall be))~~ is published as provided in RCW 90.03.280. If  
3 it shall appear that such transfer or such change may be made without  
4 injury or detriment to existing rights, the department shall issue to  
5 the applicant a certificate in duplicate granting the right for such  
6 transfer or for such change of point of diversion or of use. The  
7 certificate so issued shall be filed and be made a record with the  
8 department and the duplicate certificate issued to the applicant may be  
9 filed with the county auditor in like manner and with the same effect  
10 as provided in the original certificate or permit to divert water.

11 (2) If an application for change proposes to transfer water rights  
12 from one irrigation district to another, the department shall, before  
13 publication of notice, receive concurrence from each of the irrigation  
14 districts that such transfer or change will not adversely affect the  
15 ability to deliver water to other landowners or impair the financial or  
16 operational integrity of either of the districts.

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

34 (4) Subsections (1), (2), and (3) of this section do not apply to  
35 a transfer or change governed by section 2 of this act.

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

1       (6) Any right represented by an application for a water right for  
2 which a permit for water use has not been issued by the time a transfer  
3 or change is approved under this section may not be construed as being  
4 injured or detrimentally affected by the transfer or change. An  
5 existing right that is in the status of an undeveloped water use permit  
6 under which water has not been withdrawn by the time a transfer or  
7 change is approved under this section may not be construed as being  
8 injured or detrimentally affected by the transfer or change.

9       (7) The department may not initiate relinquishment proceedings  
10 under chapter 90.14 RCW regarding a water right for which an  
11 application for a transfer or change is filed under this section during  
12 the period beginning on the date the department receives the  
13 application and ending two years after the date the department approves  
14 or denies the application.

15       NEW SECTION. Sec. 2. A new section is added to chapter 90.03 RCW  
16 to read as follows:

17       (1)(a) If a portion of the water governed by a water right is made  
18 surplus to the beneficial uses exercised under the right through the  
19 implementation of practices or technologies, including but not limited  
20 to conveyance practices or technologies, which are more efficient or  
21 more water use efficient than those under which the right was  
22 perfected, the right to use the surplus water may be changed as  
23 provided by subsection (2), (3), or (6) of this section.

24       (b) If a portion of the water governed by a water right is made  
25 surplus to the beneficial uses exercised under the right through a  
26 change in the crops grown under the water right, the right to use the  
27 surplus water may be changed as provided by subsection (3) of this  
28 section. This subsection (1)(b) does not apply to water supplied by an  
29 irrigation district.

30       (c) This section applies only to a change of an agricultural use or  
31 portion of an agricultural use of water to an agricultural use of  
32 water.

33       (2) The use within an irrigation district of water supplied by the  
34 district and made surplus as provided in subsection (1)(a) of this  
35 section shall be regulated solely as provided by the board of directors  
36 of the irrigation district. Such a use requires the approval of the  
37 board of directors of the irrigation district or must otherwise be  
38 authorized by the board. The board may approve or authorize such a use

1 only if the use does not impair the financial or operational integrity  
2 of the district. Water supplied by an irrigation district and made  
3 surplus as provided in subsection (1)(a) of this section through  
4 actions taken by an individual water user served by the district is not  
5 available for use as a matter of right by that individual water user,  
6 but may be used by the board for the benefit of the district generally.  
7 The district's board of directors may approve or otherwise authorize  
8 under this subsection uses of such surplus water that result in the  
9 total irrigated acreage within the district exceeding the irrigated  
10 acreage recorded with the department for the district's water right if  
11 the board notifies the department of the change in the irrigated  
12 acreage within the district. Except as provided in subsection (6) of  
13 this section, such a notification provides a change in the district's  
14 water right and, upon receiving the notification, the department shall  
15 revise its records for the district's right to reflect the change.

16 If an irrigation district is within a federal reclamation project  
17 and the district's board of directors approves or otherwise authorizes  
18 under this subsection uses of such surplus water that result in the  
19 total irrigated acreage within the federal project exceeding the  
20 irrigated acreage recorded with the department for the federal  
21 project's water right, the board shall notify the department of the  
22 change in the irrigated acreage within the federal project. Except as  
23 provided by this subsection and subsection (6) of this section, such a  
24 notification provides a change in the federal reclamation project's  
25 water right and, upon receiving the notification, the department shall  
26 revise its records for the federal project's right to reflect the  
27 change except that the total irrigable acreage for a water right for a  
28 federal reclamation project may not exceed the total irrigable acreage  
29 authorized for the project by the United States and related repayment  
30 contracts.

31 (3) The right to use water made surplus as provided in subsection  
32 (1)(a) or (b) of this section but not supplied by an irrigation  
33 district may be changed to use on other parcels of land owned by the  
34 holder of the water right that are contiguous to the parcel or parcels  
35 of land upon which the use of the water was authorized by the right  
36 before such a change. The holder of the water right shall notify the  
37 department of such a change. Except as provided in subsection (6) of  
38 this section, the notification provides a change in the holder's water

1 right and, upon receiving the notification, the department shall revise  
2 its records for the water right to reflect the change.

3 (4) A change governed by this section shall be made without loss of  
4 priority of the right.

5 (5) This section shall not be construed as authorizing the use of  
6 a junior water right in a manner that impairs or interferes with the  
7 use of a senior water right.

8 (6) It is presumed that a change in a water right made by a  
9 notification of the department under this section does not impair or  
10 interfere with the use of a water right that is senior to the right  
11 being changed. However, if upon receiving such a notification, the  
12 department determines that the change would impair or interfere with  
13 the use of a senior water right, the department shall notify the person  
14 providing the notice and shall file a notice of its decision with the  
15 superior court of the county in which the withdrawal of water under the  
16 right takes place. The notice provided by the department shall not  
17 stay the change made to the water right under this section. The  
18 superior court shall review the determination of the department de  
19 novo. In such a review, the burden of proof in overcoming the  
20 presumption provided by this subsection is on the department. The  
21 presumption can be overcome only through the application of scientific  
22 data supporting the department's determination. At the conclusion of  
23 its review, the superior court shall enter a ruling canceling the  
24 change identified in the notification provided to the department,  
25 modifying the conditions or extent of that change, or affirming the  
26 change. If the ruling modifies the change or affirms the change, the  
27 department shall revise its records regarding the right accordingly.

28 A determination regarding impairment or interference made by the  
29 department under this subsection concerning a notification it receives  
30 under this section shall be made within one year of receiving the  
31 notification.

32 The presumption provided by this subsection does not apply with  
33 regard to a claim made in superior court by a person with a water right  
34 that a change made under this section by a junior water right holder  
35 impairs or interferes with the use of the person's senior water right.

36 (7) If a water right changed under this section is a right  
37 represented by a statement of claim in the water rights claims  
38 registry, the department's obligation to revise its records to reflect

1 the change shall be accomplished by providing an amendment to the  
2 statement of claim to reflect the change.

3 (8) This section does not apply in an area with an acreage  
4 expansion program in effect on the effective date of this section that  
5 is an element of a ground water area or subarea management program as  
6 provided in RCW 90.44.445.

7 (9) Nothing in this section authorizes a change in a water right or  
8 a portion of a water right that has not been perfected through  
9 beneficial use prior to the change.

10 **Sec. 3.** RCW 90.44.100 and 1987 c 109 s 113 are each amended to  
11 read as follows:

12 (1) After an application to, and upon the issuance by the  
13 department of an amendment to the appropriate permit or certificate of  
14 ground water right, the holder of a valid right to withdraw public  
15 ground waters may, without losing his priority of right, construct  
16 wells or other means of withdrawal at a new location in substitution  
17 for or in addition to those at the original location, or he may change  
18 the manner or the place of use of the water(~~(: PROVIDED, HOWEVER, That~~  
19 ~~such))~~). An amendment shall be issued only after publication of notice  
20 of the application and findings as prescribed in the case of an  
21 original application. Such amendment shall be issued by the department  
22 only on the conditions that: ~~((+1))~~ (a) The additional or substitute  
23 well or wells shall tap the same body of public ground water as the  
24 original well or wells; ~~((+2))~~ (b) use of the original well or wells  
25 shall be discontinued upon construction of the substitute well or  
26 wells; ~~((+3))~~ (c) the construction of an additional well or wells  
27 shall not enlarge the right conveyed by the original permit or  
28 certificate; and ~~((+4))~~ (d) other existing rights shall not be  
29 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.

33 (2) This section does not apply to a transfer or change governed by  
34 section 2 of this act.

35 (3) Any right represented by an application for a water right for  
36 which a permit for water use has not been issued by the time an  
37 amendment is approved under this section may not be construed as being  
38 impaired by the amendment. An existing right that is in the status of

1 an undeveloped water use permit under which water has not been  
2 withdrawn by the time an amendment is approved under this section may  
3 not be construed as being impaired by the amendment.

4 (4) The department may not initiate relinquishment proceedings  
5 under chapter 90.14 RCW regarding a water right for which an  
6 application for an amendment is filed under this section during the  
7 period beginning on the date the department receives the application  
8 and ending two years after the date the department makes a decision on  
9 the application.

10 **Sec. 4.** RCW 90.03.290 and 1994 c 264 s 84 are each amended to read  
11 as follows:

12 When an application complying with the provisions of this chapter  
13 and with the rules and regulations of the department has been filed,  
14 the same shall be placed on record with the department, and it shall be  
15 its duty to investigate the application, and determine what water, if  
16 any, is available for appropriation, and find and determine to what  
17 beneficial use or uses it can be applied. If it is proposed to  
18 appropriate water for irrigation purposes, the department shall  
19 investigate, determine and find what lands are capable of irrigation by  
20 means of water found available for appropriation. If it is proposed to  
21 appropriate water for the purpose of power development, the department  
22 shall investigate, determine and find whether the proposed development  
23 is likely to prove detrimental to the public interest, having in mind  
24 the highest feasible use of the waters belonging to the public. If the  
25 application does not contain, and the applicant does not promptly  
26 furnish sufficient information on which to base such findings, the  
27 department may issue a preliminary permit, for a period of not to  
28 exceed three years, requiring the applicant to make such surveys,  
29 investigations, studies, and progress reports, as in the opinion of the  
30 department may be necessary. If the applicant fails to comply with the  
31 conditions of the preliminary permit, it and the application or  
32 applications on which it is based shall be automatically canceled and  
33 the applicant so notified. If the holder of a preliminary permit  
34 shall, before its expiration, file with the department a verified  
35 report of expenditures made and work done under the preliminary permit,  
36 which, in the opinion of the department, establishes the good faith,  
37 intent and ability of the applicant to carry on the proposed  
38 development, the preliminary permit may, with the approval of the

1 governor, be extended, but not to exceed a maximum period of five years  
2 from the date of the issuance of the preliminary permit. The  
3 department shall make and file as part of the record in the matter,  
4 written findings of fact concerning all things investigated, and if it  
5 shall find that there is water available for appropriation for a  
6 beneficial use, and the appropriation thereof as proposed in the  
7 application will not impair existing rights or be detrimental to the  
8 public welfare, it shall issue a permit stating the amount of water to  
9 which the applicant shall be entitled and the beneficial use or uses to  
10 which it may be applied: PROVIDED, That where the water applied for is  
11 to be used for irrigation purposes, it shall become appurtenant only to  
12 such land as may be reclaimed thereby to the full extent of the soil  
13 for agricultural purposes. But where there is no unappropriated water  
14 in the proposed source of supply, or where the proposed use conflicts  
15 with existing rights, or threatens to prove detrimental to the public  
16 interest, having due regard to the highest feasible development of the  
17 use of the waters belonging to the public, it shall be duty of the  
18 department to reject such application and to refuse to issue the permit  
19 asked for. If the permit is refused because of conflict with existing  
20 rights and such applicant shall acquire same by purchase or  
21 condemnation under RCW 90.03.040, the department may thereupon grant  
22 such permit. Any application may be approved for a less amount of  
23 water than that applied for, if there exists substantial reason  
24 therefor, and in any event shall not be approved for more water than  
25 can be applied to beneficial use for the purposes named in the  
26 application. In determining whether or not a permit shall issue upon  
27 any application, it shall be the duty of the department to investigate  
28 all facts relevant and material to the application. After the  
29 department approves said application in whole or in part and before any  
30 permit shall be issued thereon to the applicant, such applicant shall  
31 pay the fee provided in RCW 90.03.470: PROVIDED FURTHER, That in the  
32 event a permit is issued by the department upon any application, it  
33 shall be its duty to notify the director of fish and wildlife of such  
34 issuance.

35 This section does not apply to transfers or changes made under  
36 section 2 of this act or to applications for transfers or changes made  
37 under RCW 90.03.380 or 90.44.100.



1       **Sec. 5.** RCW 90.44.445 and 1993 c 99 s 1 are each amended to read  
2 as follows:

3       In any acreage expansion program adopted by the department as an  
4 element of a ground water management program, the authorization for a  
5 water right certificate holder to participate in the program shall be  
6 on an annual basis for the first two years. After the two-year period,  
7 the department may authorize participation for ten-year periods. The  
8 department may authorize participation for ten-year periods for  
9 certificate holders who have already participated in an acreage  
10 expansion program for two years. The department may require annual  
11 certification that the certificate holder has complied with all  
12 requirements of the program. The department may terminate the  
13 authority of a certificate holder to participate in the program for one  
14 calendar year if the certificate holder fails to comply with the  
15 requirements of the program.

16       This section applies only in an area with an acreage expansion  
17 program in effect on the effective date of this amendatory section that  
18 has been adopted by the department as an element of a ground water area  
19 or subarea management program. The provisions of section 2 of this  
20 act, RCW 90.03.380, and 90.44.100 apply to transfers, changes, and  
21 amendments to permits or rights for the beneficial use of ground water  
22 in any other area.

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