
SUBSTITUTE HOUSE BILL 1272

State of Washington

55th Legislature

1997 Regular Session

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

Read first time 02/14/97.

1 AN ACT Relating to water transfers; and adding a new chapter to
2 Title 90 RCW.

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

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

5 (1) Voluntary water transfers between water users can reallocate
6 water use in a manner that will result in more efficient use of water
7 resources;

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

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

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

17 (1) "Board" means a water conservancy board created under this
18 chapter.

- 1 (2) "Commissioner" means a member of a water conservancy board.
2 (3) "Department" means the department of ecology.
3 (4) "Director" means the director of the department of ecology.

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

8 (2) A water conservancy board may be initiated by: (a) A
9 resolution of the county legislative authority; (b) a resolution
10 presented to the county legislative authority calling for the creation
11 of a board by the legislative authority of an irrigation district,
12 public utility district that operates a public water system, a
13 reclamation district, a city operating a public water system, or a
14 water-sewer district that operates a public water system; (c) a
15 resolution by the governing body of a cooperative or mutual corporation
16 that operates a public water system serving one hundred or more
17 accounts; (d) a petition signed by five or more water rights holders,
18 including their addresses, who divert water for use within the county;
19 or (e) any combination of (a) through (d) of this subsection. The
20 resolution or petition must state the need for the board, include
21 proposed bylaws or rules and procedures that will govern the operation
22 of the board, identify the geographic boundaries where there is an
23 initial interest in transacting water sales or transfers, and describe
24 the proposed method for funding the operation of the board.

25 (3) After receiving a resolution or petition to create a board, a
26 county legislative authority shall determine its sufficiency. If the
27 county legislative authority finds that the resolution or petition is
28 sufficient, or if the county is initiating the creation of a board upon
29 its own motion, it shall hold at least one public hearing on the
30 proposed creation of the board. Notice of the hearing shall be
31 published at least once in a newspaper of general circulation in the
32 county not less than ten days nor more than thirty days before the date
33 of the hearing. The notice shall describe the time, date, place, and
34 purpose of the hearing, as well as the purpose of the board. Following
35 the hearing, the county legislative authority may adopt a resolution
36 approving the creation of the board if it finds that the board's
37 creation is in the public interest.

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

7 (2) The director shall approve or deny the creation of a board
8 within forty-five days after the county legislative authority has
9 submitted all information required under subsection (1) of this
10 section. The director must determine whether the creation of the board
11 would further the purposes of this chapter and is in the public
12 interest. The director shall include a description of the necessary
13 training requirements for commissioners in the notice of approval sent
14 to the county legislative authority.

15 NEW SECTION. **Sec. 5.** The director of the department shall adopt
16 rules in accordance with chapter 34.05 RCW necessary to carry out this
17 chapter, including minimum requirements for the training and continuing
18 education of commissioners. Training courses for commissioners shall
19 include an overview of state water law and hydrology.

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

1 NEW SECTION. **Sec. 7.** (1) A water conservancy board may acquire,
2 purchase, hold, lease, manage, occupy, and sell real and personal
3 property or any interest therein, enter into and perform all necessary
4 contracts, appoint and employ necessary agents and employees and fix
5 their compensation, employ contractors including contracts for
6 professional services, sue and be sued, and do any and all lawful acts
7 required and expedient to carry out the purposes of this chapter.

8 (2) A board constitutes an independently funded entity, and may
9 provide for its own funding as determined by the commissioners. A
10 board may not impose taxes or acquire property by the exercise of
11 eminent domain.

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

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

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

37 (3) Water transfers approved by the board must remain within
38 existing beneficial uses, and a transfer of water that is being used

1 for agricultural applications is restricted to short-term or long-term
2 leases.

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

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

21 (2) The transferor and the transferee of any proposed water
22 transfer may apply to a board for approval of the transfer if the water
23 proposed to be transferred is currently diverted or used within the
24 geographic boundaries of the county, or would be diverted or used
25 within the geographic boundaries of the county if the transfer is
26 approved.

27 (3) After an application for a transfer is filed with the board,
28 the board shall publish notice of the application in accordance with
29 the publication requirements of chapter 90.03 RCW. Notice shall also
30 be sent to state agencies as provided in RCW 90.03.280. Any person may
31 submit comments to the board regarding the application. Any senior
32 water right holder claiming detriment or injury to an existing water
33 right may intervene in the application before the board pursuant to
34 subsection (4) of this section. If a majority of the board determines
35 that the application is complete, in accordance with the law and the
36 transfer can be made without injury or detriment to existing rights of
37 senior water right holders, the board shall issue the applicant a

1 certificate conditionally approving the transfer, subject to review by
2 the director.

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

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

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

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

31 (2) The director shall review any proposed transfer conditionally
32 approved by a board for compliance with this chapter, guidelines
33 adopted by the department, and other applicable law.

34 (3) Any party to a transfer or a third party who alleges his or her
35 water right will be impaired by the proposed transfer may file
36 objections with the department. If objections to the transfer are

1 filed with the department, the board shall forward the files and
2 records upon which it based its decision to the department.

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

11 NEW SECTION. **Sec. 12.** The decision of the director to approve an
12 action to create a board, or to approve, deny, or modify a water
13 transfer either by action or nonaction may be appealed to superior
14 court.

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

18 NEW SECTION. **Sec. 14.** A person who leases a water right under
19 this chapter may not lose any portion of that water right by
20 relinquishment due to the nonuse of the water by the lessee.

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

23 NEW SECTION. **Sec. 16.** A commissioner may transfer any portion of
24 a water right owned by him or her without violating the code of ethics
25 for municipal officers, chapter 42.23 RCW.

26 NEW SECTION. **Sec. 17.** Nothing in this chapter affects transfers
27 that may be otherwise approved under chapter 90.03 RCW.

28 NEW SECTION. **Sec. 18.** If any provision of this act or its
29 application to any person or circumstance is held invalid, the
30 remainder of the act or the application of the provision to other
31 persons or circumstances is not affected.

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

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