
SENATE BILL 5585

State of Washington

55th Legislature

1997 Regular Session

By Senator Fraser

Read first time 01/31/97. Referred to Committee on Agriculture & Environment.

1 AN ACT Relating to water rights for the use of water for instream
2 purposes; amending RCW 90.03.380 and 90.42.080; and adding new sections
3 to chapter 90.03 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 90.03 RCW
6 to read as follows:

7 A right to the beneficial use of water may be maintained and
8 established without a physical diversion of water and such right may be
9 held by any person as defined by RCW 90.03.015 or by a unit of state or
10 local government.

11 NEW SECTION. **Sec. 2.** A new section is added to chapter 90.03 RCW
12 to read as follows:

13 (1) A person transferring a right to the beneficial use of water
14 for instream purposes shall file a notice of the transfer with the
15 department stating the name and address of the person or governmental
16 unit to whom the right has been transferred.

17 (2) Such a transfer for instream purposes may be permanent or
18 temporary. A temporary transfer may remain in effect for any length of

1 time as determined by the water right holder. The holder of the water
2 right temporarily transferred to instream purposes may transfer all or
3 part of the water right to the use for which the water right was
4 initially granted at any time the holder chooses.

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 said
10 right may be transferred to another or to others and become appurtenant
11 to any other land or place of use, including an instream use without
12 physical diversion of water, without loss of priority of right
13 theretofore established if such change can be made without detriment or
14 injury to existing rights. The point of diversion of water for
15 beneficial use or the purpose of use may be changed, if such change can
16 be made without detriment or injury to existing rights. Before any
17 transfer of such right to use water or change of the point of diversion
18 of water or change of purpose of use can be made, any person having an
19 interest in the transfer or change, shall file a written application
20 therefor with the department, and said application shall not be granted
21 until notice of said application shall be published as provided in RCW
22 90.03.280. If it shall appear that such transfer or such change may be
23 made without injury or detriment to existing rights, the department
24 shall issue to the applicant a certificate in duplicate granting the
25 right for such transfer or for such change of point of diversion or of
26 use. The certificate so issued shall be filed and be made a record
27 with the department and the duplicate certificate issued to the
28 applicant may be filed with the county auditor in like manner and with
29 the same effect as provided in the original certificate or permit to
30 divert water.

31 (2) An instream use right approved under this section receives the
32 same priority date as the water right from which it originated. The
33 department shall identify the stream reach or reaches to which the
34 right applies.

35 (3) If an application for change proposes to transfer water rights
36 from one irrigation district to another, the department shall, before
37 publication of notice, receive concurrence from each of the irrigation
38 districts that such transfer or change will not adversely affect the

1 ability to deliver water to other landowners or impair the financial
2 integrity of either of the districts.

3 (4) A change in place of use by an individual water user or users
4 of water provided by an irrigation district need only receive approval
5 for the change from the board of directors of the district if the use
6 of water continues within the irrigation district, and when water is
7 provided by an irrigation entity that is a member of a board of joint
8 control created under chapter 87.80 RCW, approval need only be received
9 from the board of joint control if the use of water continues within
10 the area of jurisdiction of the joint board and the change can be made
11 without detriment or injury to existing rights.

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

15 **Sec. 4.** RCW 90.42.080 and 1993 c 98 s 4 are each amended to read
16 as follows:

17 (1) The state may acquire all or portions of existing water rights,
18 by purchase, gift, or other appropriate means other than by
19 condemnation, from any person or entity or combination of persons or
20 entities. Once acquired, such rights are trust water rights. A water
21 right acquired by the state that is expressly conditioned upon the use
22 being limited to instream purposes shall be administered as a trust
23 water right in compliance with such condition.

24 (2) The department may enter into leases, contracts, or such other
25 arrangements with other persons or entities as appropriate, to ensure
26 that trust water rights acquired in accordance with this chapter may be
27 exercised to the fullest possible extent.

28 (3) Trust water rights may be acquired by the state on a temporary
29 or permanent basis.

30 (4) The provisions of RCW 90.03.380 and 90.03.390 apply to
31 transfers of water rights under this section.

32 (5) No funds may be expended for the purchase of water rights by
33 the state pursuant to this section unless specifically appropriated for
34 this purpose by the legislature.

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