

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5527

55th Legislature
1998 Regular Session

Passed by the Senate March 7, 1998
YEAS 42 NAYS 4

President of the Senate

Passed by the House March 4, 1998
YEAS 79 NAYS 17

**Speaker of the
House of Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Mike O Connell, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5527** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5527

Passed Legislature - 1998 Regular Session

AS AMENDED BY THE HOUSE

State of Washington 55th Legislature 1997 Regular Session

By Senate Committee on Agriculture & Environment (originally sponsored by Senators McDonald, Rasmussen, Sellar, Fraser and Anderson)

Read first time 02/28/97.

1 AN ACT Relating to incentives for water-efficient irrigation
2 systems; amending RCW 90.03.380; adding a new chapter to Title 90 RCW;
3 and creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that significant water
6 savings may be realized through the installation and use of more
7 efficient irrigation systems and techniques. The legislature also
8 finds that positive economic incentives, establishment of necessary
9 legal procedures, and removal of legal barriers are needed to stimulate
10 the development of workable technologies and farming systems that rely
11 on lesser quantities of water.

12 The purpose of this act is to foster the use of water-efficient
13 irrigation systems by allowing the saved water to be voluntarily
14 transferred by the water right holder to other uses or other places of
15 use. Additionally, the purpose is to establish incentives through
16 enabling self-funded, private capital or public funds to provide
17 improved market-based incentives for adopting water saving technologies
18 and to allow the benefits of the conserved water to be fully realized.
19 It is the intent of this act that sufficient protections be provided to

1 assure that existing water users are not adversely affected by
2 transfers approved under this act.

3 NEW SECTION. **Sec. 2.** The definitions in this section apply
4 throughout this chapter unless the context clearly requires otherwise.

5 (1) "Contract" means a written legal instrument that provides for
6 the transfer of a portion of a water right from an existing water right
7 holder to another person for consideration.

8 (2) "Department" means the department of ecology.

9 (3) "Net water savings" has the same meaning as defined in RCW
10 90.42.020.

11 (4) "Person" means a person, corporation, quasi-municipal
12 corporation, municipal corporation, or state agency.

13 (5) "Reduction in evaporative loss" means the amount of water that
14 is no longer lost to further use as a result of changing from a
15 conventional irrigation system to a water-efficient irrigation system.
16 "Reduction in evaporative loss" includes the reduction in the amount of
17 water consumed through evaporation during the conveyance and/or the
18 application of water to crops and through transpiration by
19 nonproductive plants such as cover crops associated with the change in
20 irrigation systems, but does not include any water that contributed to
21 return flows used to satisfy existing rights.

22 (6) "Transfer" means a transfer of, change in, or amendment to a
23 surface or ground water right described in RCW 90.03.380 and 90.44.100
24 or to transfer, change, or amend such a right.

25 (7) "Trust water right" means a water right transferred to and
26 managed by the department for the benefit of instream flows or for the
27 allocation to new uses as provided in chapter 90.38 or 90.42 RCW.

28 (8) "Water-efficient irrigation system" means a system, the use of
29 which results in a water savings when compared to the use or loss of
30 water experienced in conveying water and/or applying water to a crop or
31 crops before the installation of the system.

32 NEW SECTION. **Sec. 3.** (1) A person holding a valid water right who
33 installs a water-efficient irrigation system for use under the right
34 may apply to the department for a transfer of the use of the water
35 resulting from the reduction in evaporative loss plus any additional
36 net water savings resulting from the installation. The water use may
37 be transferred:

1 (a) To other land owned by the person with less senior water rights
2 or that lacks a full and sufficient supply of water or for the
3 irrigation of an additional parcel or parcels of land owned by the
4 person. The application for such a transfer must be processed based
5 upon the same criteria as if the transfer were to be made to another
6 person; or

7 (b) To another person for use on other land.

8 In the latter case, the person holding the valid water right may
9 enter into a contract with another person for the transfer of water
10 saved through installation of the water-efficient irrigation system.
11 A contract may allow for a permanent transfer of a portion of the
12 original water right, or for lease agreements with set expiration
13 dates. The applicant shall state that the contract is not permanent in
14 the application if the contract is not permanent. Such a contract
15 shall be filed with the department with or as a supplement to the
16 application and the department shall maintain a record of such a
17 contract with the certificate of water right for the transferred water.

18 (2) In determining the amount that is transferrable as a result of
19 the installation of a water-efficient irrigation system, the department
20 shall allow the transfer of an amount equal to the reduction in the
21 evaporative loss. The reduction in evaporative loss is a readily
22 transferrable component of net water savings.

23 In addition, the department shall evaluate whether there are
24 additional net water savings that result directly from installation of
25 the water-efficient irrigation system that could be transferred without
26 detriment to other existing water users. The department may not delay
27 because of decisions on the determination of additional net water
28 savings the approval of the transfer of the water that constitutes the
29 reduction in evaporative loss.

30 (3) The use of water supplied by an irrigation district that is
31 saved through installation of a water-efficient irrigation system as
32 described in this section shall be regulated solely as provided by the
33 board of directors of the irrigation district.

34 (4) A person wishing to make application for a transfer of a water
35 right under this chapter, whether for surface or ground water, shall
36 comply with RCW 90.03.380. The transferred portion of the water right
37 has the same date of priority as the water right from which it
38 originated, but between them the transferred portion of the right is

1 inferior in priority unless otherwise provided by the parties by
2 contract filed with the department.

3 NEW SECTION. **Sec. 4.** The department may adopt rules, in
4 accordance with chapter 34.05 RCW, for procedures to be used to
5 facilitate the processing of requests for water right transfers made
6 under this chapter and to establish a streamlined procedure to quantify
7 the reduction in the evaporative loss. The methods used by the
8 department for calculating reductions in evaporative loss, including
9 but not limited to those for determining the exposure of water to
10 evaporative loss using various irrigation systems, and the pan
11 evaporation data to be used shall be the methods and data recommended
12 by the Washington state cooperative extension service.

13 The rules may establish procedures for the department to make
14 preliminary findings that can be used as an initial basis for
15 developing contracts by applicants.

16 NEW SECTION. **Sec. 5.** An applicant shall accompany an application
17 for a water right transfer under this chapter with a fee established in
18 RCW 90.03.470.

19 NEW SECTION. **Sec. 6.** In processing applications for transfers of
20 portions of water rights under this chapter, if the department is
21 unable to conclusively determine the validity of the original water
22 right, the department may include a presumption of validity in the
23 certificate of water rights. The presumption must provide to the
24 contract purchaser the same right to the use of water embodied in the
25 original water right.

26 The presumption of validity may not be used as evidence as to the
27 existence or nonexistence in a water right adjudication conducted under
28 chapter 90.03 RCW.

29 NEW SECTION. **Sec. 7.** A holder of a water right may voluntarily
30 enter into a contract with the department. The department may utilize
31 funds that are now or hereafter authorized for the purchase of water
32 savings made available under this chapter. The department shall
33 utilize the same methods of calculating water that is transferrable to
34 another party under this chapter in determining the amount of water
35 that is transferrable to the state. If additional net water saved is

1 available for the benefit of only a stream segment, the calculations
2 may be made on a case-by-case basis while assuring no detriment to
3 existing water users occurs.

4 NEW SECTION. **Sec. 8.** This chapter may be known and cited as the
5 agricultural water conservation incentives act.

6 **Sec. 9.** RCW 90.03.380 and 1997 c 442 s 801 are each amended to
7 read as follows:

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

1 and be made a record with the department and the duplicate certificate
2 issued to the applicant may be filed with the county auditor in like
3 manner and with the same effect as provided in the original certificate
4 or permit to divert water.

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

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

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

31 NEW SECTION. Sec. 10. Sections 2 through 8 of this act constitute
32 a new chapter in Title 90 RCW.

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