
SUBSTITUTE HOUSE BILL 1957

State of Washington

56th Legislature

1999 Regular Session

By House Committee on Agriculture & Ecology (originally sponsored by Representatives G. Chandler, Linville, Mastin, Reardon, Sump, Schoesler and Ericksen)

Read first time 03/02/1999.

1 AN ACT Relating to water right transfers, changes, and amendments;
2 amending RCW 90.03.380, 90.03.390, 90.44.100, 90.80.010, 90.80.020,
3 90.80.030, 90.80.040, 90.80.050, 90.80.070, 90.80.090, 90.80.120, and
4 90.80.140; adding a new section to chapter 90.03 RCW; and adding a new
5 section to chapter 90.44 RCW.

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

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

9 (1) The department is authorized to process and render decisions on
10 applications for changes or transfers of water rights under this
11 chapter and amendments of ground water rights under chapter 90.44 RCW
12 as a matter of higher priority than processing and rendering decisions
13 on applications for new water rights.

14 (2) Any application for a new water right for which a permit
15 decision has not been made by the department at the time a transfer or
16 change is approved may not be considered an existing water right
17 subject to analysis as to whether the application may be injured,
18 impaired, or detrimentally affected by the transfer or change.

1 **Sec. 2.** RCW 90.03.380 and 1997 c 442 s 801 are each amended to
2 read as follows:

3 (1) The right to the use of water which has been applied to a
4 beneficial use in the state shall be and remain appurtenant to the land
5 or place upon which the same is used: PROVIDED, HOWEVER, That the
6 right may be transferred to another or to others and become appurtenant
7 to any other land or place of use without loss of priority of right
8 theretofore established if such change can be made without detriment or
9 injury to existing rights. The point of diversion of water for
10 beneficial use or the purpose of use may be changed, if such change can
11 be made without detriment or injury to existing rights. ((A)) The
12 entire amount of water diverted under the authority of a water right
13 annually is available for diversion under such a transfer or change or
14 a portion of that amount of water may be retained and used as
15 authorized under the original right and the remainder may be diverted
16 under the transferred or changed portion of the right. However, the
17 total of the amount diverted under such a transferred or changed
18 portion of the right and the amount diverted for use as authorized
19 under the remaining portion of the original right may not exceed on an
20 annual basis the amount diverted under the authority of the original
21 water right before the transfer or change. For the purpose of example
22 and not limitation, a transfer or change in the place of use, point of
23 diversion, and/or purpose of use of a water right to enable irrigation
24 of additional acreage or the addition of new uses may be permitted if
25 such a transfer or change results in no increase in the annual
26 ((consumptive)) quantity of water ((used under)) diverted when compared
27 to the amount diverted under the authority of the original water right
28 before the transfer or change. ((For purposes of this section, "annual
29 consumptive quantity" means the estimated or actual annual amount of
30 water diverted pursuant to the water right, reduced by the estimated
31 annual amount of return flows, averaged over the most recent five year
32 period of continuous beneficial use of the water right.)) Before any
33 transfer of such right to use water or change of the point of diversion
34 of water or change of purpose of use can be made, any person having an
35 interest in the transfer or change, shall file a written application
36 therefor with the department((7)) and, if the place of use of the right
37 to be transferred or changed is located within the jurisdictional
38 boundaries of a water conservancy board created under chapter 90.80
39 RCW, with the water conservancy board. The application shall not be

1 granted until notice of the application is published as provided in RCW
2 90.03.280. If it shall appear that such transfer or such change may be
3 made without injury or detriment to existing rights, the department
4 shall issue to the applicant a certificate in duplicate granting the
5 right for such transfer or for such change of point of diversion or of
6 use. The certificate so issued shall be filed and be made a record
7 with the department and the duplicate certificate issued to the
8 applicant may be filed with the county auditor in like manner and with
9 the same effect as provided in the original certificate or permit to
10 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
16 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.

26 (4) If the place of use of a right to be transferred or changed is
27 located within the jurisdictional boundaries of a water conservancy
28 board created under chapter 90.80 RCW, the application for the transfer
29 or change filed under this section shall be reviewed by the board. The
30 department shall conduct its review of such a transfer or change under
31 this section only if the board submits a report and a proposed
32 certificate conditionally approving the transfer or change under RCW
33 90.80.080. Except as provided by this subsection, decisions on
34 applications shall be made by the board in the order in which the
35 applications are filed with it, and decisions regarding the proposed
36 certificates filed with the department by a board under RCW 90.80.080
37 shall be made by the department in the order in which the certificates
38 are filed with the department by that board. If review of an
39 application or proposed certificate has begun and gathering information

1 beyond that available at the time of the review is required, neither
2 the board nor the department must await the availability of that
3 information to review the next application or applications or next
4 proposed certificate or certificates in the order otherwise required by
5 this subsection.

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

9 **Sec. 3.** RCW 90.03.390 and 1991 c 350 s 3 are each amended to read
10 as follows:

11 (1) RCW 90.03.380 shall not be construed to prevent water users
12 from making a seasonal or temporary change of point of diversion or
13 place of use of water when such change can be made without detriment to
14 existing rights, but in no case shall such change be made without the
15 permission of the water master of the district in which such proposed
16 change is located, or of the department. Nor shall RCW 90.03.380 be
17 construed to prevent construction of emergency interties between public
18 water systems to permit exchange of water during short-term emergency
19 situations, or rotation in the use of water for bringing about a more
20 economical use of the available supply, provided however, that the
21 department of health in consultation with the department of ecology
22 shall adopt rules or develop written guidelines setting forth standards
23 for determining when a short-term emergency exists and the
24 circumstances in which emergency interties are permitted. The rules or
25 guidelines shall be consistent with the procedures established in RCW
26 43.83B.400 through 43.83B.420. Water users owning lands to which water
27 rights are attached may rotate in the use of water to which they are
28 collectively entitled, or an individual water user having lands to
29 which are attached water rights of a different priority, may in like
30 manner rotate in use when such rotation can be made without detriment
31 to other existing water rights, and has the approval of the water
32 master or department.

33 (2) If the place of use of a right to be transferred or changed
34 under this section is located within the jurisdictional boundaries of
35 a water conservancy board created under chapter 90.80 RCW, the
36 application for the transfer or change shall be filed with both the
37 department and with the board. The application shall be reviewed by
38 the board. The department or its water master shall review the

1 transfer or change under this section only if the board submits a
2 report and a proposed certificate conditionally approving the transfer
3 or change under RCW 90.80.080. Except as provided by this subsection,
4 decisions on applications shall be made by the board in the order in
5 which the applications are filed with it, and decisions regarding the
6 proposed certificates filed with the department by a board under RCW
7 90.80.080 shall be made by the department or its water master in the
8 order in which the certificates are filed with the department by that
9 board. If review of an application or proposed certificate has begun,
10 and gathering information beyond that available at the time of the
11 review is required, neither the board nor the department or its water
12 master must await the availability of that information to review the
13 next application or applications or next proposed certificate or
14 certificates in the order otherwise required by this subsection.

15 NEW SECTION. Sec. 4. A new section is added to chapter 90.44 RCW
16 to read as follows:

17 Any application for a new water right for which a permit decision
18 has not been made by the department at the time an amendment to a water
19 right is approved may not be considered an existing water right subject
20 to analysis as to whether the application may be injured, impaired, or
21 detrimentally affected by the amendment.

22 Sec. 5. RCW 90.44.100 and 1997 c 316 s 2 are each amended to read
23 as follows:

24 (1) After an application to, and upon the issuance by the
25 department of an amendment to the appropriate permit or certificate of
26 ground water right, the holder of a valid right to withdraw public
27 ground waters may, without losing the holder's priority of right,
28 construct wells or other means of withdrawal at a new location in
29 substitution for or in addition to those at the original location, or
30 the holder may change the (~~manner~~) purpose or the place of use of the
31 water. The entire amount of water withdrawn under the authority of a
32 water right annually is available for withdrawal under such an amended
33 right, or a portion of that amount of water may be retained and used as
34 authorized under the original right and the remainder may be withdrawn
35 under the amended portion of the right. However, the total of the
36 amount withdrawn under such an amended portion of the right and the
37 amount withdrawn for use as authorized under the remaining portion of

1 the original right may not exceed on an annual basis the amount
2 withdrawn under the authority of the original water right before the
3 amendment. For the purpose of example and not limitation, an amendment
4 for the place of use, location of withdrawal, and/or purpose of use of
5 a water right to enable irrigation of additional acreage or the
6 addition of new uses may be permitted if such an amendment results in
7 no increase in the annual quantity of water withdrawn when compared to
8 the amount withdrawn under the authority of the original water right
9 before the amendment.

10 (2) An amendment to construct replacement or a new additional well
11 or wells at a location outside of the location of the original well or
12 wells or to change the (~~manner~~) purpose or place of use of the water
13 shall be issued only after publication of notice of the application and
14 findings as prescribed in the case of an original application. Such
15 amendment shall be issued by the department only on the conditions
16 that: (a) The additional or replacement well or wells shall tap the
17 same body of public ground water as the original well or wells; (b)
18 where a replacement well or wells is approved, the use of the original
19 well or wells shall be discontinued and the original well or wells
20 shall be properly decommissioned as required under chapter 18.104 RCW;
21 (c) where an additional well or wells is constructed, the original well
22 or wells may continue to be used, but the combined total withdrawal
23 from the original and additional well or wells shall not (~~enlarge the~~
24 ~~right conveyed by~~) exceed the amount of water withdrawn under the
25 original permit or certificate; and (d) other existing rights shall not
26 be impaired. The department may specify an approved manner of
27 construction and shall require a showing of compliance with the terms
28 of the amendment, as provided in RCW 90.44.080 in the case of an
29 original permit.

30 (3) The construction of a replacement or new additional well or
31 wells at the location of the original well or wells shall be allowed
32 without application to the department for an amendment. However, the
33 following apply to such a replacement or new additional well: (a) The
34 well shall tap the same body of public ground water as the original
35 well or wells; (b) if a replacement well is constructed, the use of the
36 original well or wells shall be discontinued and the original well or
37 wells shall be properly decommissioned as required under chapter 18.104
38 RCW; (c) if a new additional well is constructed, the original well or
39 wells may continue to be used, but the combined total withdrawal from

1 the original and additional well or wells shall not (~~enlarge the right~~
2 ~~conveyed by~~) exceed the amount withdrawn under the original water use
3 permit or certificate; (d) the construction and use of the well shall
4 not interfere with or impair water rights with an earlier date of
5 priority than the water right or rights for the original well or wells;
6 (e) the replacement or additional well shall be located no closer than
7 the original well to a well it might interfere with; (f) the department
8 may specify an approved manner of construction of the well; and (g) the
9 department shall require a showing of compliance with the conditions of
10 this subsection (3).

11 (4) If the place of use of a right to be amended under this section
12 is located within the jurisdictional boundaries of a water conservancy
13 board created under chapter 90.80 RCW, the application for the
14 amendment shall be filed with both the department and with the board.
15 The application shall be reviewed by the board. The department shall
16 review the amendment under this section only if the board submits a
17 report and a proposed certificate conditionally approving the amendment
18 under RCW 90.80.080. Except as provided by this subsection, decisions
19 on applications shall be made by the board in the order in which the
20 applications are filed with it, and decisions regarding the proposed
21 certificates filed with the department by a board under RCW 90.80.080
22 shall be made by the department in the order in which the certificates
23 are filed with the department by that board. If review of an
24 application or proposed certificate has begun and gathering information
25 beyond that available at the time of the review is required, neither
26 the board nor the department must await the availability of that
27 information to review the next application or applications or next
28 proposed certificate or certificates in the order otherwise required by
29 this subsection.

30 (5) As used in this section, the "location of the original well or
31 wells" is the area described as the point of withdrawal in the original
32 public notice published for the application for the water right for the
33 well.

34 **Sec. 6.** RCW 90.80.010 and 1997 c 441 s 2 are each amended to read
35 as follows:

36 The following definitions apply throughout this chapter, unless the
37 context clearly requires otherwise.

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

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

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

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

6 (5) "Transfer" means a transfer, change, or amendment to a water
7 right referred to in RCW 90.03.380, 90.03.390, or 90.44.100.

8 **Sec. 7.** RCW 90.80.020 and 1997 c 441 s 3 are each amended to read
9 as follows:

10 (1) The county legislative authority of a county may create a water
11 conservancy board(~~(, subject to approval by the director,)~~) for the
12 purpose of expediting voluntary water transfers within the county.

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

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

1 purpose of the hearing, as well as the purpose of the board. Following
2 the hearing, the county legislative authority may adopt a resolution
3 (~~approving the creation of~~) creating the board if it finds that the
4 board's creation furtheres the purposes of this chapter and is in the
5 public interest.

6 (4) The county legislative authorities of two or more counties may
7 choose to join in the creation of one water conservancy board to serve
8 the counties. They may also choose to expand the jurisdiction of an
9 existing board to encompass one or more additional counties. Following
10 a public hearing held in each county to be included within the
11 jurisdiction of the board and held on the issue of creating such a
12 multicounty board or expanding the jurisdiction of an existing board,
13 each such county may adopt a resolution creating one multicounty board
14 for the counties or expanding the jurisdiction of an existing board to
15 include one or more additional counties. The resolution shall specify
16 each of the counties to be included within the jurisdiction of the
17 board. If the resolution is adopted in each of the counties so
18 specified, the board is created for those counties, or is expanded to
19 include within its jurisdiction those counties. If the jurisdiction of
20 an existing board is expanded in this manner, the terms of office of
21 the commissioners of the board so expanded shall terminate and
22 commissioners for the board with new terms of office shall be appointed
23 as provided in RCW 90.80.050.

24 **Sec. 8.** RCW 90.80.030 and 1997 c 441 s 4 are each amended to read
25 as follows:

26 (1) Following the adoption of a resolution creating a water
27 conservancy board, the county legislative authority shall forward a
28 copy of the resolution (~~or petition calling for the creation of the~~
29 board, a copy of the resolution approving the creation of the board,
30 and a summary of the public testimony presented at the public hearing))
31 to the director (~~following the adoption of the resolution calling for~~
32 the board's creation)).

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

1 ~~training requirements for commissioners in the notice of approval sent~~
2 ~~to the county legislative authority.))~~ Following the adoption of
3 resolutions creating a board for a multicounty area or expanding the
4 jurisdiction of a board under RCW 90.80.020(4), the county legislative
5 authority of each county within the jurisdiction of the board shall
6 forward a copy of its resolution to the director.

7 **Sec. 9.** RCW 90.80.040 and 1997 c 441 s 5 are each amended to read
8 as follows:

9 The director of the department may, as deemed necessary by the
10 director, adopt rules in accordance with chapter 34.05 RCW necessary to
11 carry out this chapter, including minimum requirements for the training
12 and continuing education of commissioners. Training courses for
13 commissioners shall include an overview of state water law and
14 hydrology. The training courses shall be provided by or through the
15 department. The department shall provide the initial training required
16 for a commissioner to take action under this chapter at training
17 sessions held once each year. These annual training sessions shall be
18 designed to accommodate all commissioners who have not yet received
19 such training. Prior to commissioners taking action on proposed water
20 right transfers, the commissioners shall comply with training
21 requirements that include state water law and hydrology.

22 **Sec. 10.** RCW 90.80.050 and 1997 c 441 s 6 are each amended to read
23 as follows:

24 A water conservancy board constitutes a public body corporate and
25 politic and a separate unit of local government in the state. The
26 public body corporate and politic of an existing board, the
27 jurisdiction of which is expanded under RCW 90.80.020(4), is continuous
28 with the body corporate and politic of the board created by the
29 expansion of jurisdiction. Each board shall consist of three
30 commissioners appointed by the county legislative authority or
31 authorities of the counties within the jurisdiction of the board for
32 six-year terms. The county legislative authority or authorities shall
33 stagger the initial appointment of commissioners so that the first
34 commissioners who are appointed shall serve terms of two, four, and six
35 years, respectively, from the date of their appointment. All vacancies
36 shall be filled for the unexpired term. The county legislative
37 authority or authorities shall consider, but ~~((is))~~ are not limited in

1 appointing, nominations to the board by people or entities petitioning
2 or requesting the creation of the board. However, the county
3 legislative authority or authorities shall ensure that individual water
4 right holders who divert water for use within the county are
5 represented on the board. In making appointments to the board, the
6 county legislative authority or authorities shall choose from among
7 persons who are residents of the county or a county that is contiguous
8 to the county that the water conservancy board is to serve. No
9 commissioner may participate in board decisions until he or she has
10 successfully completed the necessary training required under RCW
11 90.80.040. Commissioners shall serve without compensation, but are
12 entitled to reimbursement for necessary travel expenses in accordance
13 with RCW 43.03.050 and 43.03.060 and costs incident to training.

14 **Sec. 11.** RCW 90.80.070 and 1997 c 441 s 9 are each amended to read
15 as follows:

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

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

1 (3) After an application for a transfer is filed with the board,
2 the board shall publish notice of the application in accordance with
3 the publication requirements and send notice to state agencies as
4 provided in RCW 90.03.280. Any person may submit comments to the board
5 regarding the application. Any water right holder claiming detriment
6 or injury to an existing water right may intervene in the application
7 before the board pursuant to subsection (4) of this section. If a
8 majority of the board determines that the application is complete, in
9 accordance with the law and the transfer can be made without injury or
10 detriment to existing water rights in accordance with RCW 90.03.380,
11 90.03.390, or 90.44.100, the board shall issue the applicant a
12 certificate conditionally approving the transfer, subject to review by
13 the director.

14 (4) If a water right holder claims a proposed transfer will cause
15 an impairment to that right, the water right holder is entitled to a
16 hearing before the board. The board shall receive such evidence as it
17 deems material and necessary to determine the validity of the claim of
18 impairment. If the party claiming the impairment establishes by a
19 preponderance of the evidence that his or her water right will be
20 impaired by the proposed transfer, the board may not approve the
21 transfer unless the applicant and the impaired party agree upon
22 compensation for the impairment.

23 **Sec. 12.** RCW 90.80.090 and 1997 c 441 s 12 are each amended to
24 read as follows:

25 The decision of the director (~~((to approve an action to create a~~
26 ~~board, or))~~) to approve, deny, or modify a water transfer either by
27 action or nonaction shall be appealable in the same manner as other
28 water right decisions made pursuant to chapter 90.03 RCW.

29 **Sec. 13.** RCW 90.80.120 and 1997 c 441 s 16 are each amended to
30 read as follows:

31 (1) A commissioner of a water conservancy board who has an
32 ownership interest in a water right subject to an application for
33 approval of a transfer (~~((or change))~~) by the board, shall not
34 participate in the board's review or decision upon the application.

35 (2) A commissioner of a water conservancy board who also serves as
36 an employee or upon the governing body of a municipally owned water
37 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
2 that water system has or is proposed to have an ownership interest.

3 **Sec. 14.** RCW 90.80.140 and 1997 c 441 s 18 are each amended to
4 read as follows:

5 Nothing in this chapter affects transfers that may be otherwise
6 approved under chapter 90.03 or 90.44 RCW.

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