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SENATE BILL 6018

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State of Washington

57th Legislature

2001 Regular Session

By Senators McDonald and Morton

Read first time 02/14/2001. Referred to Committee on Environment,  
Energy & Water.

1 AN ACT Relating to incentives for water-efficient irrigation  
2 systems; amending RCW 90.42.020 and 90.03.380; and adding new sections  
3 to chapter 90.42 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 90.42 RCW  
6 to read as follows:

7 The legislature finds that significant water savings could be  
8 realized through the installation of more efficient irrigation systems  
9 such as trickle irrigation systems where climatically and economically  
10 suitable. The legislature also finds that positive economic  
11 incentives, establishment of necessary legal procedures, and removal of  
12 legal barriers are needed to stimulate the development of workable  
13 technologies and farming systems that rely on lesser quantities of  
14 water.

15 The purpose of this act is to stimulate the use of water-efficient  
16 irrigation systems by allowing the saved water to be voluntarily  
17 transferred by the water right holder. Additionally, the purpose is to  
18 allow private, as well as public, investment to provide improved  
19 market-based incentives for adopting water saving technologies and to

1 allow the benefits of the conserved water to be fully realized. It is  
2 the intent of this act that sufficient protections be provided to  
3 assure that existing water users are not adversely affected by  
4 transfers approved under this act.

5 **Sec. 2.** RCW 90.42.020 and 1991 c 347 s 6 are each amended to read  
6 as follows:

7 Unless the context clearly requires otherwise, the definitions in  
8 this section apply throughout this chapter.

9 (1) "Department" means the department of ecology.

10 (2) "Evaporative loss" is the amount of water consumed through  
11 evaporation or transpiration.

12 (3) "Net water savings" means the amount of water that is  
13 determined to be conserved and usable within a specified stream reach  
14 or reaches for other purposes without impairment or detriment to water  
15 rights existing at the time that a water conservation project is  
16 undertaken, reducing the ability to deliver water, or reducing the  
17 supply of water that otherwise would have been available to other  
18 existing water uses.

19 (~~(3)~~) (4) "Trust water right" means any water right acquired by  
20 the state under this chapter for management in the state's trust water  
21 rights program.

22 (~~(4)~~) (5) "Pilot planning areas" means the geographic areas  
23 designated under RCW 90.54.045(2).

24 (~~(5)~~) (6) "Water conservation project" means any project or  
25 program that achieves physical or operational improvements that provide  
26 for increased water use efficiency in existing systems of diversion,  
27 conveyance, application, or use of water under water rights existing on  
28 July 28, 1991.

29 NEW SECTION. **Sec. 3.** A new section is added to chapter 90.42 RCW  
30 to read as follows:

31 (1) For purposes of this chapter, any person holding a valid water  
32 right may enter into a contract with any other person for the transfer  
33 of net water savings from installation of a water-efficient irrigation  
34 system financed by any party to the contract. A contract may be for a  
35 permanent or temporary transfer.

36 The transferred portion has the same date of priority as the water  
37 right from which it originated, but between them the transferred

1 portion of the right is inferior in priority unless otherwise provided  
2 by the parties to the contract.

3 The department shall maintain with the certificate of water right  
4 a record of contracts for transferred water.

5 (2) In processing applications for transfers of portions of water  
6 rights under this section, if the department is unable to conclusively  
7 determine the validity of the original water right, the department may  
8 make a presumption of validity in respect to both the original water  
9 right and the portion that is transferred.

10 The presumption of validity may not be used as evidence as to the  
11 existence of the water right in an adjudication conducted under chapter  
12 90.03 RCW.

13 (3) The department shall approve the transfer of the portion of net  
14 water savings that is a reduction in evaporative loss. The department  
15 shall also determine whether there are any additional net water savings  
16 that result directly from installation of the water-efficient  
17 irrigation system that can also be transferred.

18 (4) The department may adopt rules, in accordance with chapter  
19 34.05 RCW, for procedures similar to those adopted under RCW 90.42.050  
20 to be used to facilitate the processing of requests for water right  
21 transfers made under this section.

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

25 **Sec. 4.** RCW 90.03.380 and 1997 c 442 s 801 are each amended to  
26 read as follows:

27 (1) The right to the use of water which has been applied to a  
28 beneficial use in the state shall be and remain appurtenant to the land  
29 or place upon which the same is used(~~(:—PROVIDED, HOWEVER, That the)~~).  
30 However, all or a portion of a right may be transferred to another or  
31 to others and become appurtenant to any other land or place of use  
32 without loss of priority of right theretofore established if such  
33 change can be made without detriment or injury to existing rights. The  
34 point of diversion of water for beneficial use or the purpose of use  
35 may be changed, if such change can be made without detriment or injury  
36 to existing rights. A change in the place of use, point of diversion,  
37 and/or purpose of use of a water right to enable irrigation of  
38 additional acreage or the addition of new uses may be permitted if such

1 change results in no increase in the annual consumptive quantity of  
2 water used under the water right. For purposes of this section,  
3 "annual consumptive quantity" means the estimated or actual annual  
4 amount of water diverted pursuant to the water right, reduced by the  
5 estimated annual amount of return flows, averaged over the most recent  
6 five-year period of continuous beneficial use of the water right.  
7 Before any transfer of such right to use water or change of the point  
8 of diversion of water or change of purpose of use can be made, any  
9 person having an interest in the transfer or change, shall file a  
10 written application therefor with the department, and the application  
11 shall not be granted until notice of the application is published as  
12 provided in RCW 90.03.280. If it shall appear that such transfer or  
13 such change may be made without injury or detriment to existing rights,  
14 the department shall issue to the applicant a certificate in duplicate  
15 granting the right for such transfer or for such change of point of  
16 diversion or of use. The certificate so issued shall be filed and be  
17 made a record with the department and the duplicate certificate issued  
18 to the applicant may be filed with the county auditor in like manner  
19 and with the same effect as provided in the original certificate or  
20 permit to divert water.

21 (2) If an application for change proposes to transfer water rights  
22 from one irrigation district to another, the department shall, before  
23 publication of notice, receive concurrence from each of the irrigation  
24 districts that such transfer or change will not adversely affect the  
25 ability to deliver water to other landowners or impair the financial  
26 integrity of either of the districts.

27 (3) A change in place of use by an individual water user or users  
28 of water provided by an irrigation district need only receive approval  
29 for the change from the board of directors of the district if the use  
30 of water continues within the irrigation district, and when water is  
31 provided by an irrigation entity that is a member of a board of joint  
32 control created under chapter 87.80 RCW, approval need only be received  
33 from the board of joint control if the use of water continues within  
34 the area of jurisdiction of the joint board and the change can be made  
35 without detriment or injury to existing rights.

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

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