
**Agriculture & Natural
Resources Committee**

HB 1097

Brief Description: Directing the department of ecology to conduct pilot rule making to establish and assign trust authorization credits.

Sponsors: Representatives Linville and Hinkle.

Brief Summary of Bill

- Requires the Department of Ecology (DOE) to conduct pilot rule making to allow water rights transfers to the trust water rights program to establish and assign trust authorization credits.
- Allows the DOE pilot rule making in up to five water resource inventory areas (WRIAs).
- Requires the DOE to solicit comments and legislative recommendations regarding pilot rule and report them to the Legislature.

Hearing Date: 1/29/03

Staff: Caroleen Dineen (786-7156).

Background:

The state may acquire a trust water right by donation, purchase, lease, or means other than condemnation. Trust water rights are placed in the state's trust water rights program and managed by the Department of Ecology (DOE). Two trust water rights systems, one for the Yakima River Basin and the other for the rest of the state, are established in state law.

Uses. Trust water rights may be held or authorized for use for instream flows, irrigation, municipal, or other beneficial uses consistent with applicable regional plans. Trust water rights also may be used to resolve critical water supply problems. Trust water rights acquired in areas with an approved watershed plan must be consistent with any plan provisions regarding acquisition.

Water conservation projects. The state may finance water conservation projects. The state

deposits into the trust water rights program the "net water savings" achieved through funded projects. "Net water savings" is defined as the amount of water determined to be conserved and usable for other purposes without impairing water rights existing at the time a water conservation project is undertaken. Statutory requirements regarding changes in point of diversion, place of use, or purpose of use do not apply to trust water rights acquired through funding of water conservation projects.

Notice and Documentation. Before a trust water right is created or modified, the DOE must provide notice to the public, government entities, and interest groups according to statutory requirements. For each permanent trust water right conveyed to the state, the DOE issues a water right certificate. The DOE issues a superseding certificate, which has the same priority date as the original water right, to identify the amount of water a water right holder would continue to be entitled to use as a result of a water conservation project. The DOE uses other certificates or instruments to document nonpermanent conveyances of water rights into the trust water rights program.

Priority. A trust water right has the same priority date as the water right from which it originated. The trust water right would be junior (inferior in priority) to the original right unless specified otherwise by agreement of the state and the original water right holder.

Donations and Leases. The DOE must accept donations on the terms prescribed by the donor. For donations and leases, the amount of the trust water right (or the donated/leased portion and the portion reserved by the water right holder) does not exceed the extent to which the right was exercised during the five years preceding the donation or lease. The donated or leased right's status as a trust water right is not evidence of the validity or quantity of the water right

When part of an existing water right donated to the trust water rights program will assist in achieving established instream flows, the DOE must process a change or amendment of an existing right without reviewing the extent and validity of the part of the right retained by the water right holder.

Temporary Trust Water Rights. The DOE places into the trust water rights program the full amount of water diverted or withdrawn according to a water right donated or acquired on a temporary basis. This same amount reverts to the donor or original right holder when the trust period ends.

Relinquishment. Statutory relinquishment provisions do not apply to trust water rights.

Impairment. The DOE must determine that a trust water right will not impair existing water rights or the public interest before such a right may be exercised. The DOE also must stop or modify trust water right use if impairment occurs.

For donated and leased trust water rights, the DOE must review an impairment claim from any person who believes his or her water right has been impaired by a donated or leased right and must alter the trust water right to eliminate any impairment. DOE's impairment decisions are appealable to the Pollution Control Hearings Board.

Findings. Legislative findings recognize the benefits of water use efficiency programs in addressing the state's water shortage for existing and future water needs. Legislative findings also address the importance of developing programs to increase the state's ability to manage state waters to resolve conflicts and satisfy water needs.

Summary of Bill:

The Department of Ecology (DOE) is required to conduct pilot rule making allowing water rights transfers to the trust water rights program for the purpose of establishing and assigning trust authorization credits. A "trust authorization credit" is a credit representing the authorization to use water from the trust water program. Water conservancy boards may not process applications for trust authorization credits.

The DOE's pilot rule making may involve a maximum of five water resource inventory areas (WRIAs). The WRIAs are to be chosen based on the:

- likelihood the assignment of trust authorization credits could provide temporary or permanent water supply to address drought or future water supply demands; and
- existence of plans, programs, or technical resources within the WRIA to assist with implementation and review of the pilot rule making.

Pilot rule making must require that establishment and assignment of trust authorization credits comply with trust water program requirements. Assignment of credits also must comply with any conditions imposed on the transfer of the water rights to the trust water rights program unless the transferor has approved modification or elimination of conditions to allow assignment of trust authorization credits.

At a minimum, the pilot rule making must include provisions relating to geographical constraints on trust authorization credits and procedures to establish, quantify, use, and assign trust authorization credits. The pilot rule making also must include procedures for ensuring that assignment of trust authorization credits complies with statutory impairment provisions.

The DOE is required to request comments and any legislative recommendations from a variety of governmental entities and interest groups within 180 days of pilot rule adoption. The DOE also must forward comments to the chair and ranking minority member of the appropriate committees of the Legislature within 60 days of receipt.

Legislative findings are added regarding the uses of the state's trust water rights program to facilitate voluntary water transfers and to promote resource management. Legislative findings also specify the benefits of creating water banks. Legislative intent is included to authorize the DOE to conduct pilot rule making for water banks.

Appropriation: None.

Fiscal Note: Not Requested.

Effective Date: The bill contains an emergency clause and takes effect immediately.