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ENGROSSED SENATE BILL 5106

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State of Washington

58th Legislature

2003 Regular Session

By Senators Hewitt, Hale, T. Sheldon, Doumit, Sheahan, Rasmussen, Morton, Mulliken, Honeyford, Deccio and Parlette

Read first time 01/15/2003. Referred to Committee on Natural Resources, Energy & Water.

1 AN ACT Relating to water rights; amending RCW 90.03.380 and  
2 90.44.100; and declaring an emergency.

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

4 **Sec. 1.** RCW 90.03.380 and 2001 c 237 s 5 are each amended to read  
5 as follows:

6 (1) The right to the use of water which has been applied to a  
7 beneficial use in the state shall be and remain appurtenant to the land  
8 or place upon which the same is used: PROVIDED, HOWEVER, That the  
9 right may be transferred to another or to others and become appurtenant  
10 to any other land or place of use without loss of priority of right  
11 theretofore established if such change can be made without detriment or  
12 injury to existing rights. The point of diversion of water for  
13 beneficial use or the purpose of use may be changed, if such change can  
14 be made without detriment or injury to existing rights. A change in  
15 the place of use, point of diversion, and/or purpose of use of a water  
16 right to enable irrigation of additional acreage or the addition of new  
17 uses may be permitted if such change results in no increase in the

1 annual consumptive quantity of water used under the water right. For  
2 purposes of this section, "annual consumptive quantity" means the  
3 estimated or actual annual amount of water diverted pursuant to the  
4 water right, reduced by the estimated annual amount of return flows(~~(~~  
5 ~~averaged over the two years of greatest use within the most recent~~  
6 ~~five-year period of continuous beneficial use of the water right)~~).  
7 The annual consumptive quantity of a water right may not be deemed to  
8 be less than the actual peak historic use of a water right, even if the  
9 right is not being fully exercised at the time of change or transfer,  
10 if: (a) The reduced use is due to cropping patterns or system  
11 efficiencies; (b) the water right holder intends to fully exercise the  
12 right; and (c) the water right holder has the facilities in place to  
13 make beneficial use of the full right. Before any transfer of such  
14 right to use water or change of the point of diversion of water or  
15 change of purpose of use can be made, any person having an interest in  
16 the transfer or change, shall file a written application therefor with  
17 the department, and the application shall not be granted until notice  
18 of the application is published as provided in RCW 90.03.280. If it  
19 shall appear that such transfer or such change may be made without  
20 injury or detriment to existing rights, the department shall issue to  
21 the applicant a certificate in duplicate granting the right for such  
22 transfer or for such change of point of diversion or of use. The  
23 certificate so issued shall be filed and be made a record with the  
24 department and the duplicate certificate issued to the applicant may be  
25 filed with the county auditor in like manner and with the same effect  
26 as provided in the original certificate or permit to divert water.

27 (2) If an application for change proposes to transfer water rights  
28 from one irrigation district to another, the department shall, before  
29 publication of notice, receive concurrence from each of the irrigation  
30 districts that such transfer or change will not adversely affect the  
31 ability to deliver water to other landowners or impair the financial  
32 integrity of either of the districts.

33 (3) A change in place of use by an individual water user or users  
34 of water provided by an irrigation district need only receive approval  
35 for the change from the board of directors of the district if the use  
36 of water continues within the irrigation district, and when water is  
37 provided by an irrigation entity that is a member of a board of joint  
38 control created under chapter 87.80 RCW, approval need only be received

1 from the board of joint control if the use of water continues within  
2 the area of jurisdiction of the joint board and the change can be made  
3 without detriment or injury to existing rights.

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

7 (5)(a) Pending applications for new water rights are not entitled  
8 to protection from impairment, injury, or detriment when an application  
9 relating to an existing surface or ground water right is considered.

10 (b) Applications relating to existing surface or ground water  
11 rights may be processed and decisions on them rendered independently of  
12 processing and rendering decisions on pending applications for new  
13 water rights within the same source of supply without regard to the  
14 date of filing of the pending applications for new water rights.

15 (c) Notwithstanding any other existing authority to process  
16 applications, including but not limited to the authority to process  
17 applications under WAC 173-152-050 as it existed on January 1, 2001, an  
18 application relating to an existing surface or ground water right may  
19 be processed ahead of a previously filed application relating to an  
20 existing right when sufficient information for a decision on the  
21 previously filed application is not available and the applicant for the  
22 previously filed application is sent written notice that explains what  
23 information is not available and informs the applicant that processing  
24 of the next application will begin. The previously filed application  
25 does not lose its priority date and if the information is provided by  
26 the applicant within sixty days, the previously filed application shall  
27 be processed at that time. This subsection (5)(c) does not affect any  
28 other existing authority to process applications.

29 (d) Nothing in this subsection (5) is intended to stop the  
30 processing of applications for new water rights.

31 (6) No applicant for a change, transfer, or amendment of a water  
32 right may be required to give up any part of the applicant's valid  
33 water right or claim to a state agency, the trust water rights program,  
34 or to other persons as a condition of processing the application.

35 (7) In revising the provisions of this section and adding  
36 provisions to this section by chapter 237, Laws of 2001, the  
37 legislature does not intend to imply legislative approval or

1 disapproval of any existing administrative policy regarding, or any  
2 existing administrative or judicial interpretation of, the provisions  
3 of this section not expressly added or revised.

4 (8) The right to use water for any beneficial use within the  
5 general category of an agricultural use includes the right to use the  
6 water, without applying to the department or any other governmental  
7 entity for approval, for any other beneficial use within the general  
8 category of an agricultural use. The general category of an  
9 agricultural use of water includes, but is not limited to, the  
10 beneficial use of water for stock watering, agricultural irrigation,  
11 agricultural frost control, processing agricultural commodities into  
12 agricultural products, and other agricultural uses.

13 **Sec. 2.** RCW 90.44.100 and 1997 c 316 s 2 are each amended to read  
14 as follows:

15 (1) After an application to, and upon the issuance by the  
16 department of an amendment to the appropriate permit or certificate of  
17 ground water right, the holder of a valid right to withdraw public  
18 ground waters may, without losing the holder's priority of right,  
19 construct wells or other means of withdrawal at a new location in  
20 substitution for or in addition to those at the original location, or  
21 the holder may change the manner or the place of use of the water.

22 (2) An amendment to construct replacement or a new additional well  
23 or wells at a location outside of the location of the original well or  
24 wells or to change the manner or place of use of the water shall be  
25 issued only after publication of notice of the application and findings  
26 as prescribed in the case of an original application. Such amendment  
27 shall be issued by the department only on the conditions that: (a) The  
28 additional or replacement well or wells shall tap the same body of  
29 public ground water as the original well or wells; (b) where a  
30 replacement well or wells is approved, the use of the original well or  
31 wells shall be discontinued and the original well or wells shall be  
32 properly decommissioned as required under chapter 18.104 RCW; (c) where  
33 an additional well or wells is constructed, the original well or wells  
34 may continue to be used, but the combined total withdrawal from the  
35 original and additional well or wells shall not enlarge the right  
36 conveyed by the original permit or certificate; and (d) other existing  
37 rights shall not be impaired. The department may specify an approved

1 manner of construction and shall require a showing of compliance with  
2 the terms of the amendment, as provided in RCW 90.44.080 in the case of  
3 an original permit.

4 (3) The construction of a replacement or new additional well or  
5 wells at the location of the original well or wells shall be allowed  
6 without application to the department for an amendment. However, the  
7 following apply to such a replacement or new additional well: (a) The  
8 well shall tap the same body of public ground water as the original  
9 well or wells; (b) if a replacement well is constructed, the use of the  
10 original well or wells shall be discontinued and the original well or  
11 wells shall be properly decommissioned as required under chapter 18.104  
12 RCW; (c) if a new additional well is constructed, the original well or  
13 wells may continue to be used, but the combined total withdrawal from  
14 the original and additional well or wells shall not enlarge the right  
15 conveyed by the original water use permit or certificate; (d) the  
16 construction and use of the well shall not interfere with or impair  
17 water rights with an earlier date of priority than the water right or  
18 rights for the original well or wells; (e) the replacement or  
19 additional well shall be located no closer than the original well to a  
20 well it might interfere with; (f) the department may specify an  
21 approved manner of construction of the well; and (g) the department  
22 shall require a showing of compliance with the conditions of this  
23 subsection (3).

24 (4) As used in this section, the "location of the original well or  
25 wells" is the area described as the point of withdrawal in the original  
26 public notice published for the application for the water right for the  
27 well.

28 (5) The right to use water for any beneficial use within the  
29 general category of an agricultural use includes the right to use the  
30 water, without applying to the department or any other governmental  
31 entity for approval, for any other beneficial use within the general  
32 category of an agricultural use. The general category of an  
33 agricultural use of water includes, but is not limited to, the  
34 beneficial use of water for stock watering, agricultural irrigation,  
35 agricultural frost control, processing agricultural commodities into  
36 agricultural products, and other agricultural uses.

1        NEW SECTION.   **Sec. 3.**   This act is necessary for the immediate  
2   preservation of the public peace, health, or safety, or support of the  
3   state government and its existing public institutions, and takes effect  
4   immediately.

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