
SENATE BILL 5106

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; and amending RCW 90.03.380.

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

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

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

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

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

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

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

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

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

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

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

32 (7) In revising the provisions of this section and adding
33 provisions to this section by chapter 237, Laws of 2001, the
34 legislature does not intend to imply legislative approval or
35 disapproval of any existing administrative policy regarding, or any
36 existing administrative or judicial interpretation of, the provisions
37 of this section not expressly added or revised.

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