
SENATE BILL 5125

State of Washington

58th Legislature

2003 Regular Session

By Senators Honeyford, Doumit and Morton

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

1 AN ACT Relating to directing the department of ecology to conduct
2 pilot rule making to establish and assign trust authorization credits;
3 amending RCW 90.42.005 and 90.42.020; adding a new section to chapter
4 90.42 RCW; and declaring an emergency.

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

6 **Sec. 1.** RCW 90.42.005 and 1991 c 347 s 1 are each amended to read
7 as follows:

8 (1) It is the policy of the state of Washington to recognize and
9 preserve water rights in accordance with RCW 90.03.010.

10 (2) The legislature finds that:

11 (a) The state of Washington is faced with a shortage of water with
12 which to meet existing and future needs, particularly during the summer
13 and fall months and in dry years when the demand is greatest;

14 (b) Consistent with RCW 90.54.180, reallocation, conservation, and
15 water use efficiency programs, including storage, should be the
16 preferred methods of addressing water ((uses)) demands because they can
17 relieve current critical water situations, provide for presently unmet
18 needs, and assist in meeting future water needs. Presently unmet needs
19 or current needs includes the water required to increase the frequency

1 of occurrence of base or minimum flow levels in streams of the state,
2 the water necessary to satisfy existing water rights, or the water
3 necessary to provide full supplies to existing water systems with
4 current supply deficiencies; (~~and~~)

5 (c) The interests of the state will be served by developing
6 programs and regional water resource plans, in cooperation with local
7 governments, federally recognized tribal governments, appropriate
8 federal agencies, private citizens, and the various water users and
9 water interests in the state, that increase the overall ability to
10 manage the state's waters in order to resolve conflicts and to better
11 satisfy both present and future needs for water; and

12 (d) The trust water program can be used to achieve a variety of
13 water resource management objectives throughout the state, including
14 responding to drought, improving streamflows on a voluntary basis,
15 providing water mitigation, or reserving water supply for future uses.
16 The legislature also finds that the trust program can be used to
17 facilitate the reallocation of water from one beneficial use to
18 another. The legislature intends to authorize the department to
19 conduct pilot rule making to test the proposition that water banking
20 can facilitate the reallocation of water and reduce water transfer
21 transaction costs.

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

24 Unless the context clearly requires otherwise, the definitions in
25 this section apply throughout this chapter.

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

27 (2) "Net water savings" means the amount of water that is
28 determined to be conserved and usable within a specified stream reach
29 or reaches for other purposes without impairment or detriment to water
30 rights existing at the time that a water conservation project is
31 undertaken, reducing the ability to deliver water, or reducing the
32 supply of water that otherwise would have been available to other
33 existing water uses.

34 (3) "Trust water right" means any water right acquired by the state
35 under this chapter for management in the state's trust water rights
36 program.

1 (4) "Pilot planning areas" means the geographic areas designated
2 under RCW 90.54.045(2).

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

8 (6) "Trust authorization credit" means a credit representing the
9 authorization to use water from the trust water program.

10 (7) "WRIA" means a water resource inventory area as defined in RCW
11 90.82.020.

12 NEW SECTION. Sec. 3. A new section is added to chapter 90.42 RCW
13 to read as follows:

14 (1) The department shall conduct a pilot rule-making process under
15 RCW 34.05.313 authorizing:

16 (a) The transfer of water rights to the trust water program for
17 purposes of establishing trust authorization credits; and

18 (b) The assignment of trust authorization credits from the trust
19 water program.

20 (2) The department's pilot rule making may occur in up to five
21 WRIAs. In selecting WRIAs for the pilot rule making, the department
22 shall consider the following factors:

23 (a) The likelihood that the assignment of trust authorization
24 credits could provide temporary or permanent water supply to address
25 drought or future water supply demands; and

26 (b) The existence of plans, programs, or technical resources within
27 the WRIA to assist with implementation and review of the pilot rule
28 making.

29 (3) The department's pilot rule under this section shall require
30 that the establishment and assignment of trust authorization credits
31 comply with all applicable requirements of the trust water program.
32 The assignment of trust authorization credits from the trust water
33 program shall comply with conditions placed on the transfer of the
34 water rights to the trust program, unless the party who transferred the
35 water rights to the trust program indicates on a trust assignment
36 application that such conditions may be modified or eliminated to
37 enable a proposed assignment of trust authorization credits.

1 (4) The department's pilot rule shall include at least the
2 following provisions:

3 (a) Procedures for establishing and quantifying consumptive and
4 nonconsumptive trust authorization credits through the submission of
5 trust authorization credit applications;

6 (b) Procedures for utilization of trust authorization credits;

7 (c) Procedures for assignment of trust authorization credits;

8 (d) Procedures for ensuring that assignments of trust authorization
9 credits comply with the impairment provisions of this chapter;

10 (e) Geographical constraints on trust authorization credits by
11 basin, subbasin, or water source; and

12 (f) Procedures for appeals of trust authorization credits'
13 assignments.

14 (5) Within one hundred eighty days of adopting any pilot rule under
15 this section, the department shall request comments from
16 municipalities, Indian tribes, conservation groups, developers,
17 agricultural organizations, and the appropriate regional office within
18 the WRIA to obtain input on the pilot rule and recommendations for the
19 legislature to consider regarding the trust water right assignment
20 pilot program. The department shall forward these comments to the
21 chair and ranking minority member of the appropriate standing
22 committees of the Legislature within sixty days of receipt.

23 (6) Conservancy boards established under chapter 90.80 RCW are not
24 authorized to process applications to establish trust authorization
25 credits.

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

--- END ---