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SENATE BILL 5906

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State of Washington

59th Legislature

2005 Regular Session

By Senators Fraser, Morton and Rasmussen

Read first time 02/14/2005. Referred to Committee on Water, Energy & Environment.

1 AN ACT Relating to the trust water rights program; amending RCW  
2 90.42.020 and 90.42.100; adding new sections to chapter 90.42 RCW;  
3 creating a new section; repealing RCW 90.38.005, 90.38.010, 90.38.020,  
4 90.38.030, 90.38.040, 90.38.050, 90.38.900, 90.38.901, 90.38.902,  
5 90.42.010, 90.42.030, 90.42.040, 90.42.050, and 90.42.080; and  
6 declaring an emergency.

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

8 NEW SECTION. **Sec. 1.** The legislature finds that the trust water  
9 rights program is an important tool to meet the state's current and  
10 future needs for water, both instream and out-of-stream. It is the  
11 intent of this act to enhance the effectiveness of the trust water  
12 rights program by clarifying and consolidating procedures for  
13 establishing trust water rights.

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

16 Unless the context clearly requires otherwise, the definitions in  
17 this section apply throughout this chapter.

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

1           (2) "Impairment" means detriment or injury to existing rights as  
2 that phrase is used in RCW 90.03.380(1).

3           (3) "Net water savings" means the amount of water that is  
4 determined to be conserved and usable ~~((within))~~ from a specified  
5 ~~((stream reach or reaches))~~ water body for other purposes without  
6 causing impairment ~~((or detriment))~~ to existing water rights ~~((existing~~  
7 ~~at the time that a water conservation project is undertaken, reducing~~  
8 ~~the ability to deliver water, or reducing the supply of water that~~  
9 ~~otherwise would have been available to other existing water uses))~~.

10           ~~((3))~~ (4) "Trust water program" means the program established  
11 under this chapter under which the department holds or manages trust  
12 water rights.

13           (5) "Trust water right" means any water right ~~((acquired))~~  
14 transferred to or managed by the state under this chapter ~~((for~~  
15 ~~management in))~~ and the state's trust water rights program.

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

18           ~~(5))~~ (6) "Water conservation project" means any project or program  
19 that achieves physical or operational improvements that provide for  
20 increased water use efficiency in existing systems of diversion,  
21 conveyance, application, or use of water under water rights existing on  
22 July 28, 1991.

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

25           (1) The department is authorized to acquire or manage existing  
26 water rights and to establish such water rights as trust water rights  
27 as provided under this chapter. A trust water right may be established  
28 on a temporary or permanent basis. A trust water right may be  
29 established only from an existing water right or portion thereof, to  
30 the extent the right has been applied to beneficial use, and only by  
31 appropriate means other than condemnation.

32           (2) All trust water rights shall be held in trust by the department  
33 under the trust water program and each trust water right shall be  
34 managed for purposes for which the trust water right is transferred to  
35 the trust water program. Trust water rights may be held, managed, or  
36 authorized for use by the department for any beneficial use described

1 in RCW 90.54.020(1). Trust water rights also may be managed for  
2 mitigation purposes, and for the reservation of water rights for future  
3 needs as provided under RCW 90.54.050.

4 (3) The department shall manage trust water rights in accordance  
5 with the terms under which the trust water right was established,  
6 including any agreement between the parties executed at the time the  
7 trust water right was established, or as subsequently modified by  
8 mutual agreement of the parties.

9 (4) The department may make arrangements, including entry into  
10 contracts with other persons or entities as appropriate, to ensure that  
11 trust water rights established in accordance with this chapter can be  
12 exercised to the fullest possible extent consistent with applicable  
13 state laws.

14 (5) The department shall cooperate fully with the United States in  
15 the implementation of this chapter. Trust water rights established  
16 through expenditure of funds provided by the United States shall be  
17 treated in the same manner as trust water rights established through  
18 the expenditure of state funds.

19 NEW SECTION. **Sec. 4.** A new section is added to chapter 90.42 RCW  
20 to read as follows:

21 (1) To establish a permanent trust water right, the water right  
22 must be conveyed to the state of Washington. Title to a water right  
23 transferred to the trust water rights program on a temporary basis may  
24 remain the property of the water right holder while managed by the  
25 department in the trust water rights program, consistent with the terms  
26 established by a donor under subsection (3) of this section and with  
27 the terms of any mutual agreement between the water right holder and  
28 the department developed under section 3(3) of this act. Upon  
29 expiration of the period of time for which a temporary trust water  
30 right is established, the water right holder may resume use of the  
31 original water right with its original priority date, place of use,  
32 purpose of use, and point of diversion or withdrawal.

33 (2)(a) Except as provided in (b) of this subsection or RCW  
34 90.03.380(4), RCW 90.03.380 applies to trust water right transfers  
35 under this chapter.

36 (b) Notwithstanding the provisions of RCW 90.03.380, the department

1 shall establish expedited procedures for notice, opportunity for  
2 comment, and review for proposals to establish temporary trust water  
3 rights.

4 (3) If a water right holder chooses to donate all or a portion of  
5 that water right to the trust water rights program to assist in  
6 providing instream flows on a temporary or permanent basis, the  
7 department may accept the donation on such terms as the water right  
8 holder may prescribe as long as the donation satisfies the applicable  
9 requirements of this chapter and other provisions of state law, and the  
10 terms prescribed are relevant and material to protecting any interest  
11 in the water right retained by the donor.

12 (4) Where the state establishes a trust water right from a portion  
13 of an existing water right, only the portion of the right to be placed  
14 in the trust water rights program is subject to this chapter.

15 (5) A trust water right established by the department through  
16 funding for a water conservation project may be established only for  
17 the period of time during which the conservation project is in effect.  
18 Before the expenditure of state funds for a water conservation project,  
19 the state and the water right holder must agree on the terms and  
20 duration of the trust water right transfer as a result of the  
21 conservation project.

22 NEW SECTION. **Sec. 5.** A new section is added to chapter 90.42 RCW  
23 to read as follows:

24 No state funds may be expended to acquire trust water rights by the  
25 state under this chapter unless specifically appropriated for this  
26 purpose by the legislature. Before expending state or federal funds  
27 for a trust water right, the department shall exercise appropriate due  
28 diligence to ensure the validity and extent of the water right or  
29 portion thereof for which the funds will be expended.

30 NEW SECTION. **Sec. 6.** A new section is added to chapter 90.42 RCW  
31 to read as follows:

32 A water right conveyed to the trust water rights program as a  
33 donation that is expressly conditioned to limit its use to instream  
34 purposes must be managed by the department for public purposes to  
35 ensure that it qualifies as a donation that is deductible for federal  
36 income taxation purposes for the person conveying the water right.

1        NEW SECTION.    **Sec. 7.**    A new section is added to chapter 90.42 RCW  
2 to read as follows:

3        The water right relinquishment provisions of RCW 90.14.130 through  
4 90.14.230 do not apply to a trust water right as of the date the trust  
5 water right is established.

6        NEW SECTION.    **Sec. 8.**    A new section is added to chapter 90.42 RCW  
7 to read as follows:

8        (1) When a water right or portion thereof is proposed to be  
9 transferred to the department as a trust water right by an irrigation  
10 district, evidence of the district's authority to represent the water  
11 right holders must be submitted to the department.

12        (2) If a water right is appurtenant to land located within an  
13 irrigation district, the department may not establish a trust water  
14 right without the approval of the board of directors of the irrigation  
15 district.

16        **Sec. 9.**    RCW 90.42.100 and 2003 c 144 s 2 are each amended to read  
17 as follows:

18        (1) The department is hereby authorized to use the trust water  
19 rights program in the Yakima river basin for water banking purposes.

20        (2) Water banking may be used for one or more of the following  
21 purposes:

22        (a) To authorize the use of trust water rights to mitigate for  
23 water resource impacts, future water supply needs, or any beneficial  
24 use under chapter 90.03, 90.44, or 90.54 RCW, consistent with any terms  
25 and conditions established by the transferor, except that return flows  
26 from water rights authorized in whole or in part for any purpose shall  
27 remain available as part of the Yakima basin's total water supply  
28 available and to satisfy existing rights for other downstream uses and  
29 users;

30        (b) To document transfers of water rights to and from the trust  
31 water rights program; and

32        (c) To provide a source of water rights the department can make  
33 available to third parties on a temporary or permanent basis for any  
34 beneficial use under chapter 90.03, 90.44, or 90.54 RCW, including the  
35 issuance of new water rights that, in combination with water rights

1 held in the trust water rights program for water banking purposes,  
2 would not decrease total water supply available in the Yakima basin.

3 (3) The department shall not use water banking to:

4 (a) Cause detriment or injury to existing rights;

5 (b) Issue temporary water rights or portions thereof for new  
6 potable uses requiring an adequate and reliable water supply under RCW  
7 19.27.097;

8 (c) Administer federal project water rights, including federal  
9 storage rights; or

10 (d) Allow carryover of stored water from one water year to another  
11 water year.

12 (4) For purposes of this section and RCW 90.42.135, "total water  
13 supply available" shall be defined as provided in the 1945 consent  
14 decree between the United States and water users in the Yakima river  
15 basin, and consistent with later interpretation by state and federal  
16 courts.

17 NEW SECTION. Sec. 10. The following acts or parts of acts are  
18 each repealed:

19 (1) RCW 90.38.005 (Findings--Purpose) and 1989 c 429 s 1;

20 (2) RCW 90.38.010 (Definitions) and 1989 c 429 s 2;

21 (3) RCW 90.38.020 (Acquisition or donation of trust water rights)  
22 and 2002 c 329 s 7, 2001 c 237 s 28, & 1989 c 429 s 3;

23 (4) RCW 90.38.030 (Water conservation projects--Contracts for  
24 financial assistance) and 1989 c 429 s 4;

25 (5) RCW 90.38.040 (Trust water rights program) and 2001 c 237 s 29,  
26 1994 c 264 s 90, & 1989 c 429 s 5;

27 (6) RCW 90.38.050 (Rules) and 1989 c 429 s 6;

28 (7) RCW 90.38.900 (Existing policies not replaced) and 1989 c 429  
29 s 7;

30 (8) RCW 90.38.901 (Transfer of rights between irrigation districts  
31 not intended) and 1989 c 429 s 8;

32 (9) RCW 90.38.902 (Existing rights not impaired) and 1989 c 429 s  
33 9;

34 (10) RCW 90.42.010 (Findings--Intent) and 1998 c 245 s 173;

35 (11) RCW 90.42.030 (Contracts to finance water conservation  
36 projects--Public benefits--Trust water rights) and 1993 c 98 s 2 & 1991  
37 c 347 s 7;

1 (12) RCW 90.42.040 (Trust water rights program--Water right  
2 certificate--Notice of creation or modification) and 2002 c 329 s 8,  
3 2001 c 237 s 30, 1993 c 98 s 3, & 1991 c 347 s 8;

4 (13) RCW 90.42.050 (Guidelines governing trust water rights--  
5 Submission of guidelines to joint select committee) and 1991 c 347 s 9;  
6 and

7 (14) RCW 90.42.080 (Trust water rights--Acquisition, donation,  
8 exercise, and transfer--Appropriation required for expenditure of  
9 funds) and 2002 c 329 s 9, 2001 c 237 s 31, 1993 c 98 s 4, & 1991 c 347  
10 s 12.

11 NEW SECTION. **Sec. 11.** If any provision of this act or its  
12 application to any person or circumstance is held invalid, the  
13 remainder of the act or the application of the provision to other  
14 persons or circumstances is not affected.

15 NEW SECTION. **Sec. 12.** This act is necessary for the immediate  
16 preservation of the public peace, health, or safety, or support of the  
17 state government and its existing public institutions, and takes effect  
18 immediately.

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