

2SSB 5219 - S AMD 144

By Senators Hargrove, Honeyford

ADOPTED 03/11/2013

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that purchase of
4 lands by state agencies for less intensive economic uses may affect the
5 economic vitality of local communities by reducing essential water
6 resources necessary to retain economic activity of the area. The
7 legislature finds that a number of parcels of land purchased by state
8 agencies have water rights appurtenant to them. The legislature
9 continues to support agency efforts to allow continued use of portions
10 of land parcels that contribute to the local economy by actions such as
11 leasing back irrigated parcels to local producers for continued
12 production of food and other agricultural commodities. The legislature
13 finds that the economies in many rural areas of the state have declined
14 and are in need of retaining water resources to prevent further
15 decline.

16 The purpose of this act is to establish a process to retain water
17 rights when they are no longer used on state purchased lands and to
18 make this resource available for alternate uses to continue to support
19 the local economy, jobs, and the tax base rather than be permanently
20 lost to the economy of the area through relinquishment under chapter
21 90.14 RCW.

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

24 (1) Within existing appropriations, the department of fish and
25 wildlife, the parks and recreation commission, and the department of
26 natural resources shall each maintain an inventory of water rights
27 appurtenant to each parcel of land purchased by their agencies. Each
28 agency shall seek assistance from the department of ecology in
29 maintaining this inventory. At least once each year, each agency shall

1 review and record whether all or a portion of the water right for each
2 of these lands purchased by the agency has been beneficially used. If
3 the agency does not plan on continuing beneficial use of all or a
4 portion of the water right on the state-owned lands, or if all or a
5 portion of a particular water right has been unused during the prior
6 four-consecutive-year period, the agency shall file a change or
7 transfer application with the department of ecology and commence the
8 process of transferring the unused portion of the water right to the
9 local economy trust water account established in this chapter. Before
10 the end of the fifth year of nonuse of all or a portion of the water
11 rights, the transfer must be completed and the water right shall be
12 temporarily held by the department of ecology as a local economy trust
13 water right until the water right is transferred to another beneficial
14 use as provided in subsection (3) of this section.

15 (2) If an agency has commenced the process of transferring all or
16 a portion of a water right as required under subsection (1) of this
17 section, but subsequently placed the water right to beneficial use on
18 the state-owned land before the end of the fifth year, and plans to
19 continue to fully use the water right in subsequent years, the agency
20 shall notify the department of ecology to terminate the transfer of the
21 water right to the local economy trust water account.

22 (3) Water rights temporarily held by the department of ecology
23 under this section shall be available for transfer to a new use or uses
24 within the same WRIA as the original use, consistent with RCW 90.03.380
25 or 90.44.100, as appropriate. Once a water right is transferred to the
26 local economy trust water account and the department has completed a
27 trust water agreement and identified the area of suitability for
28 transfer consistent with chapter 90.38 or 90.44 RCW, the department
29 must provide notification that a water right may be available to the
30 person who filed an application for a new water right under chapter
31 90.03 or 90.44 RCW as appropriate, based on whose water right
32 appropriation is next in line for processing within the area of
33 suitability for transfer within the WRIA.

34 (4)(a) A request to transfer the water right may be processed if:

35 (i) The applicant responds to the department within thirty calendar
36 days; and

37 (ii) The applicant agrees to pay the department's costs associated

1 with placing the new water supplies into the local economy trust water
2 account and completing the transfer from the local economy trust water
3 account to the applicant's new use.

4 (b) If the thirty-day period elapses and an affirmative written
5 response is not received from the applicant by the department, the
6 department shall provide the notice to the next applicant in line in
7 accordance with subsection (3) of this section.

8 (5) If the department has not issued a permit within three years of
9 the date that the water right was transferred into the local economy
10 trust water account, the department shall submit a written report to
11 the standing committees of the legislature with jurisdiction over water
12 right matters, and to the legislators representing the area in which
13 the original water right was used providing the reasons for the failure
14 to approve a transfer of the water right to a new use.

15 (6) If a person does not indicate an interest in obtaining a water
16 right from the local economy trust water account, it does not affect
17 the standing of the original water right application.

18 (7) This section does not apply to properties with deed
19 restrictions in conflict with this section or where application of this
20 section would otherwise violate law.

21 (8) The provisions of this section and section 3 of this act apply
22 to all WRIAs in the state.

23 (9) This section does not apply to nonconsumptive water rights used
24 by fish hatcheries and associated rearing ponds, or to water rights
25 associated with permit-exempt wells established under RCW 90.44.050.

26 (10) This section does not apply to state lands as defined in RCW
27 79.02.010, managed by the department of natural resources, or to state
28 forest lands as defined in RCW 79.02.010.

29 (11) As used in this section and section 3 of this act, "WRIA"
30 means a water resource inventory area established in chapter 173-500
31 WAC.

32 NEW SECTION. **Sec. 3.** A new section is added to chapter 90.42 RCW
33 to read as follows:

34 (1) If the agency's nonuse of a water right meets any of the
35 sufficient cause exceptions listed in RCW 90.14.140(1), the agency is
36 not required to place that specific unused water into the local economy
37 trust water account.

1 (2) Upon the transfer of a water right under section 2(1) of this
2 act, the department shall establish a local economy trust water account
3 for the WRIA in which the water right had been used. The department
4 shall place and hold the water right in the account pending completion
5 of a transfer to another beneficial use as provided in this section and
6 section 2 of this act.

7 (3) The department may transfer all or a portion of a water right
8 held in the local economy trust water account to a new water use
9 identified through the process in section 2 of this act upon occurrence
10 of all of the following:

11 (a) The department receives a request from a qualified applicant
12 identified pursuant to section 2 of this act for transfer of a water
13 right or portion thereof; and

14 (b) The request is reviewed and approved under RCW 90.03.380 or
15 90.44.100, as applicable, for the new beneficial use or uses. The
16 department may not authorize the use of a water right if it causes
17 detriment or injury to existing rights.

18 (4) The priority date of the water right or portion thereof
19 transferred by the department from the local economy trust water
20 account shall be the priority date of the underlying water right that
21 had been transferred into the local economy trust water account, but as
22 between the underlying water right and the new transferred right, the
23 underlying water right shall be deemed to be senior in priority unless
24 otherwise specified by agreement between the agency holding the
25 underlying water right and the new water right holder.

26 (5) The department shall issue documentation for that water right
27 or portion thereof to the new water right holder based on the
28 requirements applicable to the transfer of other water rights from the
29 trust water program, as provided under this chapter or chapter 90.38
30 RCW, as applicable. Documentation must include a description of the
31 property to which the water right will be appurtenant after the water
32 right or portion thereof is transferred from local economy trust water
33 account to the new water right holder.

34 (6) The department's decision on the transfer of a water right or
35 portion thereof from the local economy trust water account may be
36 appealed to the pollution control hearings board under RCW 43.21B.230
37 or to a superior court conducting a general adjudication under RCW
38 90.03.210.

1 (7) Notice of application for transfer of a water right under this
2 section must be published by the applicant as provided under RCW
3 90.03.380. The department must provide electronic notice and
4 opportunity to comment to affected local governments and affected
5 federally recognized tribal governments before initiating use of the
6 local economy trust water account for the first time in a WRIA.

7 (8) Water rights are not subject to loss by statutory
8 relinquishment under RCW 90.14.130 through 90.14.200 while such water
9 rights are:

10 (a) Waiting for a final determination from the department on a
11 change or transfer application filed under RCW 90.03.250, 90.03.380, or
12 90.44.100;

13 (b) In a local economy trust water account while being held by the
14 department as a trust water right under this chapter or chapter 90.38
15 RCW; or

16 (c) Within a construction or development schedule period granted in
17 the approved water right transfer document or any development schedule
18 granted under RCW 90.03.320 for the new water right holder to place the
19 water to beneficial use."

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20 On page 1, line 2 of the title, after "economies;" strike the
21 remainder of the title and insert "adding new sections to chapter 90.42
22 RCW; and creating a new section."

EFFECT: Provides greater specificity that the agency's inventory
is to include each parcel of land.

Requires the Department of Fish and Wildlife, the Parks and
Recreation Commission, and the Department of Natural Resources to seek

assistance from the Department of Ecology on maintaining a water rights inventory for their purchased lands.

Clarifies that the specific action that the agency is to commence includes the filing of a change or transfer application.

Clarifies the status of the water right that is being held by the Department of Ecology.

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