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**HOUSE BILL 1143**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Representatives Rude, Klicker, Eslick, and Dent

Read first time 01/12/21. Referred to Committee on Rural Development, Agriculture & Natural Resources.

1 AN ACT Relating to authorizing the placement of water rights  
2 banked pursuant to RCW 90.92.070 into the trust water rights program;  
3 amending RCW 90.42.080; and declaring an emergency.

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

5 **Sec. 1.** RCW 90.42.080 and 2009 c 283 s 5 are each amended to  
6 read as follows:

7 (1)(a) The state may acquire all or portions of existing surface  
8 water or groundwater rights, by purchase, gift, or other appropriate  
9 means other than by condemnation, from any person or entity or  
10 combination of persons or entities. Once acquired, such rights are  
11 trust water rights. A water right acquired by the state that is  
12 expressly conditioned to limit its use to instream purposes shall be  
13 administered as a trust water right in compliance with that  
14 condition.

15 (b) If the holder of a right to surface water or groundwater  
16 chooses to donate all or a portion of the person's water right to the  
17 trust water system to assist in providing instream flows or to  
18 preserve surface water or groundwater resources on a temporary or  
19 permanent basis, the department shall accept the donation on such  
20 terms as the person may prescribe as long as the donation satisfies  
21 the requirements of subsection (4) of this section and the other

1 applicable requirements of this chapter and the terms prescribed are  
2 relevant and material to protecting any interest in the water right  
3 retained by the donor. Once accepted, such rights are trust water  
4 rights within the conditions prescribed by the donor.

5 (2) The department may enter into leases, contracts, or such  
6 other arrangements with other persons or entities as appropriate, to  
7 ensure that trust water rights acquired in accordance with this  
8 chapter may be exercised to the fullest possible extent.

9 (3) Trust water rights may be acquired by the state on a  
10 temporary or permanent basis.

11 (4) Except as provided in subsections (10) (~~and~~), (11), and  
12 (12) of this section, a water right donated under subsection (1)(b)  
13 of this section shall not exceed the extent to which the water right  
14 was exercised during the five years before the donation nor may the  
15 total of any portion of the water right remaining with the donor plus  
16 the donated portion of the water right exceed the extent to which the  
17 water right was exercised during the five years before the donation.  
18 A water right holder who believes his or her water right has been  
19 impaired by a trust water right donated under subsection (1)(b) of  
20 this section may request that the department review the impairment  
21 claim. If the department determines that a trust water right  
22 resulting from a donation under subsection (1)(b) of this section is  
23 impairing existing water rights in violation of RCW 90.42.070, the  
24 trust water right shall be altered by the department to eliminate the  
25 impairment. Any decision of the department to alter or not to alter a  
26 trust water right donated under subsection (1)(b) of this section is  
27 appealable to the pollution control hearings board under RCW  
28 43.21B.230. A donated water right's status as a trust water right  
29 under this subsection is not evidence of the validity or quantity of  
30 the water right.

31 (5) The provisions of RCW 90.03.380 and 90.03.390 do not apply to  
32 donations for instream flows described in subsection (1)(b) of this  
33 section, but do apply to other transfers of water rights under this  
34 section except that the consumptive quantity of a trust water right  
35 acquired by the state and held or authorized for use by the  
36 department is equal to the consumptive quantity of the right prior to  
37 transfer into the trust water rights program.

38 (6) No funds may be expended for the purchase of water rights by  
39 the state pursuant to this section unless specifically appropriated  
40 for this purpose by the legislature.

1 (7) Any water right conveyed to the trust water right system as a  
2 gift that is expressly conditioned to limit its use to instream  
3 purposes shall be managed by the department for public purposes to  
4 ensure that it qualifies as a gift that is deductible for federal  
5 income taxation purposes for the person or entity conveying the water  
6 right.

7 (8) Except as provided in subsections (10) and (11) of this  
8 section, if the department acquires a trust water right by lease, the  
9 amount of the trust water right shall not exceed the extent to which  
10 the water right was exercised during the five years before the  
11 acquisition was made nor may the total of any portion of the water  
12 right remaining with the original water right holder plus the portion  
13 of the water right leased by the department exceed the extent to  
14 which the water right was exercised during the five years before the  
15 acquisition. A water right holder who believes his or her water right  
16 has been impaired by a trust water right leased under this subsection  
17 may request that the department review the impairment claim. If the  
18 department determines that a trust water right resulting from the  
19 leasing of that trust water right leased under this subsection is  
20 impairing existing water rights in violation of RCW 90.42.070, the  
21 trust water right shall be altered by the department to eliminate the  
22 impairment. Any decision of the department to alter or not to alter a  
23 trust water right leased under this subsection is appealable to the  
24 pollution control hearings board under RCW 43.21B.230. The  
25 department's leasing of a trust water right under this subsection is  
26 not evidence of the validity or quantity of the water right.

27 (9) For a water right donated to or acquired by the trust water  
28 rights program on a temporary basis, the full quantity of water  
29 diverted or withdrawn to exercise the right before the donation or  
30 acquisition shall be placed in the trust water rights program and  
31 shall revert to the donor or person from whom it was acquired when  
32 the trust period ends. For a trust water right acquired by the state  
33 and held or authorized for use by the department, the consumptive  
34 quantity of the right when it reverts to the donor or person from  
35 whom it was acquired is equal to the consumptive quantity of the  
36 right prior to transfer into the trust water rights program.

37 (10) For water rights donated or leased under subsection (4) or  
38 (8) of this section where nonuse of the water right is excused under  
39 RCW 90.14.140(1):

1 (a) The department shall calculate the amount of water eligible  
2 to be acquired by looking at the extent to which the right was  
3 exercised during the most recent five-year period preceding the date  
4 where nonuse of the water right was excused under RCW 90.14.140(1);  
5 and

6 (b) The total of the donated or leased portion of the water right  
7 and the portion of the water right remaining with the water right  
8 holder shall not exceed the extent to which the water right was  
9 exercised during the most recent five-year period preceding the date  
10 nonuse of the water right was excused under RCW 90.14.140(1).

11 (11) For water rights donated or leased under subsection (4) or  
12 (8) of this section where nonuse of the water right is exempt under  
13 RCW 90.14.140(2) (a) or (d):

14 (a) The amount of water eligible to be acquired shall be based on  
15 historical beneficial use; and

16 (b) The total of the donated or leased portion of the water right  
17 and the portion of the water right the water right holder continues  
18 to use shall not exceed the historical beneficial use of that right  
19 during the duration of the trust.

20 (12) Upon a request made by a water right holder to the  
21 department on or before June 30, 2021, a water right banked pursuant  
22 to RCW 90.92.070, as that section existed on April 15, 2021, must be  
23 accepted by the department as a temporary trust water right donation  
24 for a period of up to two years, in the same quantity that the water  
25 right was banked pursuant to RCW 90.92.070.

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

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