

CERTIFICATION OF ENROLLMENT

HOUSE BILL 1143

67th Legislature
2021 Regular Session

Passed by the House February 24, 2021
Yeas 98 Nays 0

**Speaker of the House of
Representatives**

Passed by the Senate April 10, 2021
Yeas 48 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 1143** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

HOUSE BILL 1143

Passed Legislature - 2021 Regular Session

State of Washington

67th Legislature

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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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