
SENATE BILL 5754

State of Washington

54th Legislature

1995 Regular Session

By Senator Fraser

Read first time 02/03/95. Referred to Committee on Senate Select
Committee on Water Policy.

1 AN ACT Relating to water rights for the use of water for instream
2 purposes; amending RCW 90.03.380 and 90.42.080; and adding a new
3 section to chapter 90.03 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 90.03 RCW
6 to read as follows:

7 Notwithstanding any provision in this chapter or chapter 90.54 RCW,
8 a right to the beneficial use of water may be maintained without a
9 physical diversion of water and such right may be held by any person as
10 defined by RCW 90.03.015 or by a unit of state or local government. A
11 person transferring a right to the beneficial use of water for instream
12 purposes shall not be required to obtain approval of the transfer under
13 RCW 90.03.380, but the person shall file a notice of the transfer with
14 the department stating the name and address of the person or
15 governmental unit to whom the right has been transferred.

16 **Sec. 2.** RCW 90.03.380 and 1991 c 347 s 15 are each amended to read
17 as follows:

1 The right to the use of water which has been applied to a
2 beneficial use in the state shall be and remain appurtenant to the land
3 or place upon which the same is used: PROVIDED, HOWEVER, That said
4 right may be transferred to another or to others and become appurtenant
5 to any other land or place of use, including an instream use without
6 physical diversion of water, without loss of priority of right
7 theretofore established if such change can be made without detriment or
8 injury to existing rights. The point of diversion of water for
9 beneficial use or the purpose of use may be changed, if such change can
10 be made without detriment or injury to existing rights. A person may
11 transfer a water right to another person upon the express condition
12 that a change of use to an instream use be approved under this section,
13 and, in such cases, only the change of use and not the transfer of
14 ownership shall be reviewed under this section. Before any transfer of
15 such right to use water or change of the point of diversion of water or
16 change of purpose of use can be made, any person having an interest in
17 the transfer or change, shall file a written application therefor with
18 the department, and said application shall not be granted until notice
19 of said application shall be published as provided in RCW 90.03.280.
20 If it shall appear that such transfer or such change may be made
21 without injury or detriment to existing rights, the department shall
22 issue to the applicant a certificate in duplicate granting the right
23 for such transfer or for such change of point of diversion or of use.
24 The certificate so issued shall be filed and be made a record with the
25 department and the duplicate certificate issued to the applicant may be
26 filed with the county auditor in like manner and with the same effect
27 as provided in the original certificate or permit to divert water.

28 If an application for change proposes to transfer water rights from
29 one irrigation district to another, the department shall, before
30 publication of notice, receive concurrence from each of the irrigation
31 districts that such transfer or change will not adversely affect the
32 ability to deliver water to other landowners or impair the financial
33 integrity of either of the districts.

34 A change in place of use by an individual water user or users of
35 water provided by an irrigation district need only receive approval for
36 the change from the board of directors of the district if the use of
37 water continues within the irrigation district.

1 This section shall not apply to trust water rights acquired by the
2 state through the funding of water conservation projects under chapter
3 90.38 RCW or RCW 90.42.010 through 90.42.070.

4 **Sec. 3.** RCW 90.42.080 and 1993 c 98 s 4 are each amended to read
5 as follows:

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

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

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

19 (4) The provisions of RCW 90.03.380 and 90.03.390 apply to
20 transfers of water rights under this section.

21 (5) No funds may be expended for the purchase of water rights by
22 the state pursuant to this section unless specifically appropriated for
23 this purpose by the legislature.

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