

---

SENATE BILL 5016

---

State of Washington

64th Legislature

2015 Regular Session

By Senator Honeyford

Prefiled 12/16/14.

1 AN ACT Relating to retaining water resources to assure the  
2 vitality of local economies; adding new sections to chapter 90.42  
3 RCW; and creating a new section.

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

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

18 The purpose of this act is to establish a process to retain water  
19 rights when they are no longer used on state purchased lands and to  
20 make this resource available for alternate uses to continue to  
21 support the local economy, jobs, and the tax base rather than be

1 permanently lost to the economy of the area through relinquishment  
2 under chapter 90.14 RCW.

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

5 (1) Within existing appropriations, the department of fish and  
6 wildlife, the parks and recreation commission, and the department of  
7 natural resources shall each maintain an inventory of water rights  
8 appurtenant to each parcel of land purchased by their agencies. Each  
9 agency shall seek assistance from the department of ecology in  
10 maintaining this inventory. At least once each year, each agency  
11 shall review and record whether all or a portion of the water right  
12 for each of these lands purchased by the agency has been beneficially  
13 used. If the agency does not plan on continuing beneficial use of all  
14 or a portion of the water right on the state-owned lands, or if all  
15 or a portion of a particular water right has been unused during the  
16 prior four-consecutive-year period, the agency shall file a change or  
17 transfer application with the department of ecology and commence the  
18 process of transferring the unused portion of the water right to the  
19 local economy trust water account established in this chapter. Before  
20 the end of the fifth year of nonuse of all or a portion of the water  
21 rights, the transfer must be completed and the water right shall be  
22 temporarily held by the department of ecology as a local economy  
23 trust water right until the water right is transferred to another  
24 beneficial use as provided in subsection (3) of this section.

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

32 (3) Water rights temporarily held by the department of ecology  
33 under this section shall be available for transfer to a new use or  
34 uses within the same WRIA as the original use, consistent with RCW  
35 90.03.380 or 90.44.100, as appropriate. Once a water right is  
36 transferred to the local economy trust water account and the  
37 department has completed a trust water agreement and identified the  
38 area of suitability for transfer consistent with chapter 90.38 or  
39 90.44 RCW, the department must provide notification that a water

1 right may be available to the person who filed an application for a  
2 new water right under chapter 90.03 or 90.44 RCW as appropriate,  
3 based on whose water right appropriation is next in line for  
4 processing within the area of suitability for transfer within the  
5 WRIA.

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

7 (i) The applicant responds to the department within thirty  
8 calendar days; and

9 (ii) The applicant agrees to pay the department's costs  
10 associated with placing the new water supplies into the local economy  
11 trust water account and completing the transfer from the local  
12 economy trust water account to the applicant's new use.

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

17 (5) If the department has not issued a permit within three years  
18 of the date that the water right was transferred into the local  
19 economy trust water account, the department shall submit a written  
20 report to the standing committees of the legislature with  
21 jurisdiction over water right matters, and to the legislators  
22 representing the area in which the original water right was used  
23 providing the reasons for the failure to approve a transfer of the  
24 water right to a new use.

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

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

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

33 (9) This section does not apply to nonconsumptive water rights  
34 used by fish hatcheries and associated rearing ponds, or to water  
35 rights associated with permit-exempt wells established under RCW  
36 90.44.050.

37 (10) This section does not apply to state lands as defined in RCW  
38 79.02.010, managed by the department of natural resources, or to  
39 state forest lands as defined in RCW 79.02.010.

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

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

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

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

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

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

23 (b) The request is reviewed and approved under RCW 90.03.380 or  
24 90.44.100, as applicable, for the new beneficial use or uses. The  
25 department may not authorize the use of a water right if it causes  
26 detriment or injury to existing rights.

27 (4) The priority date of the water right or portion thereof  
28 transferred by the department from the local economy trust water  
29 account shall be the priority date of the underlying water right that  
30 had been transferred into the local economy trust water account, but  
31 as between the underlying water right and the new transferred right,  
32 the underlying water right shall be deemed to be senior in priority  
33 unless otherwise specified by agreement between the agency holding  
34 the underlying water right and the new water right holder.

35 (5) The department shall issue documentation for that water right  
36 or portion thereof to the new water right holder based on the  
37 requirements applicable to the transfer of other water rights from  
38 the trust water program, as provided under this chapter or chapter  
39 90.38 RCW, as applicable. Documentation must include a description of

1 the property to which the water right will be appurtenant after the  
2 water right or portion thereof is transferred from local economy  
3 trust water account to the new water right holder.

4 (6) The department's decision on the transfer of a water right or  
5 portion thereof from the local economy trust water account may be  
6 appealed to the pollution control hearings board under RCW 43.21B.230  
7 or to a superior court conducting a general adjudication under RCW  
8 90.03.210.

9 (7) Notice of application for transfer of a water right under  
10 this section must be published by the applicant as provided under RCW  
11 90.03.380. The department must provide electronic notice and  
12 opportunity to comment to affected local governments and affected  
13 federally recognized tribal governments before initiating use of the  
14 local economy trust water account for the first time in a WRIA.

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

18 (a) Waiting for a final determination from the department on a  
19 change or transfer application filed under RCW 90.03.250, 90.03.380,  
20 or 90.44.100;

21 (b) In a local economy trust water account while being held by  
22 the department as a trust water right under this chapter or chapter  
23 90.38 RCW; or

24 (c) Within a construction or development schedule period granted  
25 in the approved water right transfer document or any development  
26 schedule granted under RCW 90.03.320 for the new water right holder  
27 to place the water to beneficial use.

--- END ---