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**HOUSE BILL 1385**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Representative Goehner

1 AN ACT Relating to limiting transfers of water rights out of  
2 their original water resource inventory area; amending RCW 90.44.100;  
3 adding new sections to chapter 90.03 RCW; adding a new section to  
4 chapter 90.42 RCW; and creating a new section.

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

6 NEW SECTION. **Sec. 1.** The legislature recognizes that water  
7 rights are usufructuary property rights that may be transferred to  
8 others and used at a new place of use and for a new purpose of use  
9 under the authority of RCW 90.03.380 or amended under the authority  
10 of RCW 90.44.100. However, the legislature finds that there may be  
11 instances in which transfers of water rights used for irrigated  
12 agriculture from the water resource inventory area (WRIA) of origin  
13 to another WRIA are not in the public interest. These transfers can  
14 have serious adverse impacts on the WRIA of origin, including impacts  
15 on agriculture and community sustainability, and on the amount of  
16 water available for future appropriation. This is particularly true  
17 where water from the WRIA flows into the Columbia river and there are  
18 no WRIAs upstream to replace water that has been transferred out.  
19 Therefore, the legislature intends to protect agricultural water  
20 supply, rural economies, and the local public interest by prohibiting

1 water right transfers out of the WRIAs described in section 2 of this  
2 act except as in the manner described in section 2 of this act.

3 NEW SECTION. **Sec. 2.** A new section is added to chapter 90.03  
4 RCW to read as follows:

5 (1) This section applies to the following water resource  
6 inventory areas:

- 7 (a) WRIA 45 - Wenatchee;
- 8 (b) WRIA 46 - Entiat;
- 9 (c) WRIA 48 - Methow;
- 10 (d) WRIA 49 - Okanogan;
- 11 (e) WRIA 55 - Little Spokane;
- 12 (f) WRIA 57 - Middle Spokane; and
- 13 (g) WRIA 59 - Colville.

14 (2)(a) Before August 15, 2022, neither the department nor a  
15 county water conservancy board, as authorized under chapter 90.80  
16 RCW, may approve any application for a permanent or temporary  
17 transfer of all or a portion of a water right to a downstream water  
18 resource inventory area.

19 (b) After August 15, 2022, neither the department nor a county  
20 water conservancy board, as authorized under chapter 90.80 RCW, may  
21 approve any application for a permanent or temporary transfer of all  
22 or a portion of a water right to a downstream water resource  
23 inventory area until the following have occurred:

24 (i) The holder of the water right sought to be transferred has  
25 provided to the department or the water conservancy board, as  
26 appropriate, a copy of the signed, bona fide offer to purchase the  
27 water right sought to be transferred;

28 (ii) The department or the water conservancy board, as  
29 appropriate, has provided a copy of the signed, bona fide offer to  
30 the local agricultural water bank that serves the water resource  
31 inventory area from which the water right is sought to be  
32 transferred; and

33 (iii) The water bank has failed, after an evaluation period of 90  
34 days, to match the terms of the signed, bona fide offer to purchase  
35 the water right.

36 (c) The department or a water conservancy board, as appropriate,  
37 may not approve any application for a permanent or temporary transfer  
38 of all or a portion of a water right to a downstream water resource  
39 inventory area if a local agricultural water bank has, within the 90-

1 day evaluation period required in (b)(iii) of this subsection,  
2 matched the terms of a signed, bona fide offer to purchase the water  
3 right sought to be transferred.

4 (d) The requirements set forth in (b) of this subsection,  
5 including the 90-day evaluation period required by (b)(iii) of this  
6 subsection, do not apply to the proposed transfer of water rights  
7 from a water resource inventory area in which a local agricultural  
8 water bank has not been established as of August 15, 2022.

9 (3) The prohibition set forth in subsection (2) of this section  
10 does not apply to:

11 (a) The temporary transfer out of a water resource inventory area  
12 of all or a portion of a water right in response to a drought order  
13 issued pursuant to chapter 43.83B RCW;

14 (b) Existing contractual obligations of the office of the  
15 Columbia river; or

16 (c) Water rights permanently transferred to trust solely for the  
17 purpose of instream flows.

18 (4)(a) Upstream transfers may be allowed both into the water  
19 resource inventory areas listed in subsection (1) of this section and  
20 within those water resource inventory areas if they satisfy the  
21 following three criteria:

22 (i) The transfer is either into or within the mainstem of the  
23 primary river in the water resource inventory area, or the transfer  
24 is to a tributary to the primary river in the water resource  
25 inventory area and the water being transferred was used in the same  
26 tributary prior to being transferred downstream;

27 (ii) The transfer is to a new point of diversion at or downstream  
28 of the original point of diversion for the water right; and

29 (iii) The maximum quantity of water transferred upstream does not  
30 exceed the quantity historically used in that stream reach.

31 (b) A water right transferred upstream pursuant to (a) of this  
32 subsection retains its original priority date as to other water  
33 rights.

34 (c) Nothing in this section changes the requirements for water  
35 right transfers under RCW 90.03.380 or 90.44.100 in water resource  
36 inventory areas not listed in subsection (1) of this section.

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

1 (1) In order to provide flexibility for the sale of a water right  
2 within the water resource inventory areas listed in section 2 of this  
3 act, a conservation district organized under chapter 89.08 RCW and  
4 located within a water resource inventory area listed in section 2 of  
5 this act may establish a local agricultural water bank approved by  
6 the department and the county in which the water resource inventory  
7 area is located, for the purpose of acquiring valid water rights in  
8 the applicable water resource inventory area from willing water right  
9 holders at fair market value and placing such water rights in the  
10 water bank. The establishment of the infrastructure of a local  
11 agricultural water bank pursuant to this section must occur by August  
12 15, 2022.

13 (2) The operation of a local agricultural water bank must be  
14 consistent with the terms of a trust water right agreement with the  
15 department.

16 (3) Any water rights acquired pursuant to this section and a  
17 trust water right agreement are subject to the following  
18 requirements:

19 (a) The beneficially used portion of the purchased water right,  
20 or a portion thereof, must be leased back to the water right holder  
21 at the water right holder's request for continued use by the water  
22 right holder or current property owner in perpetuity;

23 (b) If, at any point in time, the water leased back to the water  
24 right holder is no longer needed for irrigation, the water must be  
25 returned to the agricultural water bank and may be reallocated for  
26 other agricultural uses within the same water resource inventory  
27 area, subject to approval by the department;

28 (c) A water right, when not in use for irrigation in whole or in  
29 part, must be managed by the water bank; and

30 (d) To ensure public benefit, all water rights purchased by a  
31 local agricultural water bank must undergo a tentative extent and  
32 validity analysis prior to being accepted by the water bank.

33 (4) A water bank established pursuant to this section may enter  
34 into other transactions with a willing water right holder that result  
35 in a legally valid agreement that the water right not be transferred  
36 out of the water resource inventory area where the water right is  
37 being used.

38 **Sec. 4.** RCW 90.44.100 and 2003 c 329 s 3 are each amended to  
39 read as follows:

1 (1) After an application to, and upon the issuance by the  
2 department of an amendment to the appropriate permit or certificate  
3 of groundwater right, the holder of a valid right to withdraw public  
4 groundwaters may, without losing the holder's priority of right,  
5 construct wells or other means of withdrawal at a new location in  
6 substitution for or in addition to those at the original location, or  
7 the holder may change the manner or the place of use of the water.

8 (2) An amendment to construct replacement or a new additional  
9 well or wells at a location outside of the location of the original  
10 well or wells or to change the manner or place of use of the water  
11 shall be issued only after publication of notice of the application  
12 and findings as prescribed in the case of an original application.  
13 Such amendment shall be issued by the department only on the  
14 conditions that: (a) The additional or replacement well or wells  
15 shall tap the same body of public groundwater as the original well or  
16 wells; (b) where a replacement well or wells is approved, the use of  
17 the original well or wells shall be discontinued and the original  
18 well or wells shall be properly decommissioned as required under  
19 chapter 18.104 RCW; (c) where an additional well or wells is  
20 constructed, the original well or wells may continue to be used, but  
21 the combined total withdrawal from the original and additional well  
22 or wells shall not enlarge the right conveyed by the original permit  
23 or certificate; and (d) other existing rights shall not be impaired.  
24 The department may specify an approved manner of construction and  
25 shall require a showing of compliance with the terms of the  
26 amendment, as provided in RCW 90.44.080 in the case of an original  
27 permit.

28 (3) The construction of a replacement or new additional well or  
29 wells at the location of the original well or wells shall be allowed  
30 without application to the department for an amendment. However, the  
31 following apply to such a replacement or new additional well: (a) The  
32 well shall tap the same body of public groundwater as the original  
33 well or wells; (b) if a replacement well is constructed, the use of  
34 the original well or wells shall be discontinued and the original  
35 well or wells shall be properly decommissioned as required under  
36 chapter 18.104 RCW; (c) if a new additional well is constructed, the  
37 original well or wells may continue to be used, but the combined  
38 total withdrawal from the original and additional well or wells shall  
39 not enlarge the right conveyed by the original water use permit or  
40 certificate; (d) the construction and use of the well shall not

1 interfere with or impair water rights with an earlier date of  
2 priority than the water right or rights for the original well or  
3 wells; (e) the replacement or additional well shall be located no  
4 closer than the original well to a well it might interfere with; (f)  
5 the department may specify an approved manner of construction of the  
6 well; and (g) the department shall require a showing of compliance  
7 with the conditions of this subsection (3).

8 (4) As used in this section, the "location of the original well  
9 or wells" is the area described as the point of withdrawal in the  
10 original public notice published for the application for the water  
11 right for the well.

12 (5) The development and use of a small irrigation impoundment, as  
13 defined in RCW 90.03.370(8), does not constitute a change or  
14 amendment for the purposes of this section. The exemption expressly  
15 provided by this subsection shall not be construed as requiring an  
16 amendment of any existing water right to enable the holder of the  
17 right to store water governed by the right.

18 (6) An amendment issued pursuant to this section is subject to  
19 the limitations set forth in section 2 of this act.

20 NEW SECTION. Sec. 5. A new section is added to chapter 90.03  
21 RCW to read as follows:

22 Nothing in chapter . . ., Laws of 2021 (this act) may be  
23 construed so as to allow a junior water right to impair a senior  
24 water right.

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